CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 229

DISTRICT OF COLUMBIA, PETITIONER,

vs.

CHARLES H. FRED, ALIAS HAMILTON C. FRED

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 10, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,360)

(34,360)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 229

DISTRICT OF COLUMBIA, PETITIONER,

vs.

CHARLES H. FRED, ALIAS HAMILTON C. FRED

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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[fols. a & 1]

IN POLICE COURT OF THE DISTRICT OF COLUMBIA

SEPTEMBER TERM, 1928

McMahon, Judge

No. 128,933

DISTRICT OF COLUMBIA

vs.

CHARLES H. FRED, alias HAMILTON C. FRED

Information for Revoked Permit

DOCKET ENTRIES

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Sept. 4, 1928.—Information filed. Plea Not Guilty. Jury Trial Demanded. Committed to Washington Asylum & Jail to await further hearing.

Sept. 5, 1928.—Released on $1,000 real estate bond for appearance at Police Court.

Nov. 23, 1928.—Verdict Guilty.

Nov. 27, 1928.—Motion for New Trial Filed.

[fol. 2] Dec. 1, 1928.—Motion for New Trial Overruled. Sentenced to be committed to the Washington Asylum & Jail for a term of 30 Days. Exceptions noted. Notice given of applying to the Court of Appeals for Writ of Error. Released on $500 Appeal Bond, Saml. H. Rogers, Surety.

Dec. 5, 1928—Bill of Exceptions Submitted.

Jan. 14, 1929.—Assignment of errors filed.

Jan. 28, 1929—Bill of Exceptions settled, signed, sealed and filed.

Febr. 1, 1929.—Writ of Error received from Court of Appeals.

Feby. 5, 1929.—Copy of record and proceedings in this case, together with Writ of Error transmitted to Court of Appeals in obedience to said Writ.

In Police Court of the District of Columbia

Information

The District of Columbia, ss:

William W. Bride, Esq., Corporation Counsel, by Stanley De Neale, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Charles H. Fred, (alias) Hamilton C. Fred, late of the District of Columbia aforesaid, on the 3rd day of September, in the year A. D. nineteen hundred and twenty-eight, in the District of Columbia aforesaid, and on K Street, Northwest, did then and there operate a certain motor vehicle and during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had been revoked and suspended by the Director of Traffic, said operator's permit having been revoked and suspended on the 16th day of December, nineteen hundred and twenty-six, said permit not having been restored, contrary to and in violation of an Act of Congress in such case made and provided, and constituting a law of the District of Columbia.

William W. Bride, Corporation Counsel, by S. De Neale, Assistant Corporation Counsel.

[fol. 3] Personally appeared H. H. Britton this 4th day of September, A. D. 1928, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

I, Robertson, Deputy Clerk, Police Court of the District of Columbia. (Seal Police Court of District of Columbia.

[Endorsed:] McMahon, Judge. Col. —. No. 128, 933. Information. Traffic. District of Columbia vs. Charles H. Fred, alias Hamilton C. Fred. Notified to appear in Court at——. Revoked permit. Witnesses: H. H. Britton, Officer. H. H. Hoke. Sep. 4th, 1928, P. N. G. Sep. 4th, 1928, J. T. D. Sep. 4th, 1928, 1,000 Bond. Filed Sep. 4th, 1928. F. A. Sebring, Clerk of Police Court. 5/5/28, on bond, Saml. L. Rogers. 9/4/28, 9/5/28. /¢ Sep. 20, 1928, cont. 10/4/28, request asst. corp. counsel, C. H. Gray. Oct. 11, 1928, cont. 10/19/28, cont. for reassignment. 10/19/28, cont. for reassignment. 11/16/28, cont. to 11/23/28. 11/23/28, Verdict Guilty. 11/27/28, Motion for new Trial filed. 11/30/28, cont. to 12/1/28. 12/1/28 motion for new trial overruled. 12/1/28, 30 days, Committed. Ex. noted. Notice given of applying to Court of Appeals for writ of Error. Appeal Bond, $500. December 1, 1928. Recognizance in the sum of $500 entered into on writ of error to Court of Appeals D. C. upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days appear in Police Court and abide by and perform its judgment and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Samuel H. Rogers, Surety. 12/5/28, Bill of Exceptions submitted. Dec. 17, 1928, time for signing bill of exceptions extended to Dec. 29, 1928. Dec. 29, 1928, time for signing bill of exceptions extended to Jan. 17, 1929. Jan. 17, 1929, time for signing bill of exceptions extended to Jan. 29, 1929. Jan. 14, 1929, assignment for error filed. Jan. 28th 1929, Bill of exceptions settled, signed, sealed and files. February 1, 1929, Writ of Error [fol. 4] received from Court of Appeals. Feby. 5, 1929, Copy of record and proceedings in this case, together with Writ of Error, transmitted to Court of Appeals in obedience to said Writ.

In Police Court of the District of Columbia

[Title omitted]

Motion for a New Trial—Filed Nov. 27, 1928

Comes now here the defendant, by his attorneys, Hawken & Havell and Harold F. Hawken, and moves the Court to grant him a new trial in the above entitled cause on the following grounds:

1. Because the Court committed error in the admission and exclusion of evidence during the trial.

2. Because of errors of law committed by the Court in its charge to the jury.

3. Because the jury rendered a verdict of guilty on the second charge of operating a- automobile after revocation of permit; that after the rendition of the said verdict the jury was discharged and ordered to return the following Monday, at which time it was disbanded and later reassembled by the Court and the present verdict rendered.

(Signed) Hawken & Havell, by Harold F. Hawken,
Attorneys for Defendant.

[File endorsement omitted.]

[fols. 5 & 6] Recognizance on writ of error for $500.00, approved December 1, 1928, omitted in printing.

[fol. 7] In Police Court of the District of Columbia

[Title omitted]

Bill of Exceptions and Order Settling Same

Be it remembered that this cause came on for hearing before the Honorable John P. McMahon, one of the judges of the Police Court of the District of Columbia, on the 23rd day of November, 1928, on a plea of not guilty hereto-

fore entered by defendant, Charles H. Fred, and a demand for a jury trial made by him, on a charge of operating a certain motor vehicle in the District of Columbia during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had been revoked and suspended by the Director of Traffic, in violation of Section 13 (d) of the Traffic Act for the District of Columbia, approved March 3, 1925, as amended by Act of Congress approved July 3, 1926, which provides as follows:

"Sec. 13 (d). Any individual found guilty of operating a motor vehicle in the District of Columbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this Act shall for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both."

The District of Columbia to prove the issue on its part joined produced testimony to the effect that the defendant, a resident of the District of Columbia had been properly issued a permit to operate a motor vehicle in the District of Columbia by the Director of Traffic on November 8, 1926; that under the authority of the Traffic Acts, Sec. 13 [fol. 8] (a), said permit and right to operate a motor vehicle in the District of Columbia had been revoked on the 15th day of December, 1926, and that on the 26th day of December, 1926, said defendant had been personally served with a copy of said order of revocation, and that on the 3rd day of September, 1928, defendant was arrested while operating a motor vehicle in the District of Columbia after having been in a collision with another vehicle previous thereto.

The testimony further showed, on behalf of the District, that said permit and right to operate a motor *b*ehicle in the District had not been restored to defendant; that no application for a review of the order of revocation had been made to the Commissioners of the District of Columbia; that no application for a writ of error had been applied for, to the Court of Appeals and that the defendant had been, prior to the filing of the instant charge, and prior to and after the passage of the Traffic Acts of Congress, convicted of violations of the laws of the District of Columbia while operating motor vehicles as follows:

Twice in 1922, for driving an automobile while intoxicated.
Once in 1923, for driving an automobile while intoxicated.
for speeding.
for driving on wrong side of street.
for driving with illegal brakes.
for making illegal turn in street.
Once in 1925, for speeding.
for reckless driving.
Once in 1927, for reckless driving.
Once in 1928, for operating a motor vehicle during the period for which his operator's permit to drive a motor vehicle in the District had been revoked and suspended by the Director of Traffic, said permit not having been restored, and for operating an automobile while under the influence of intoxicating liquor.

The District further showed that as late as April, 1928, defendant had been issued by the District of Columbia License Office automobile license tags and registration card for the year 1928.

[fol. 9] Thereupon the District of Columbia rested and defendant offered testimony to the effect that he had been a resident of the State of Virginia since April, 1928; that on August 6, 1928, there was issued to him by the proper authorities of the State of Virginia, a motor vehicle registration card number 540,221; that he had complied with the laws of the State of Virginia in securing said card authorizing him to operate a motor vehicle in the State of Virginia; that on the 3rd day of September, 1928, the date of his arrest in the District of Columbia, he had with him the said registration card and had on his motor vehicle, Virginia tags. The defendant further showed that he had been operating said motor vehicle in the District of Columbia for about four hours previous to the time thereto.

Thereupon the defendant, by his counsel, S. McComas Hawken, moved the Court, Honorable John P. McMahon presiding, that upon all the testimony, as a matter of law, the jury should be instructed to return a verdict of not guilty, on the ground that the defendant, Charles H. Fred, was the operator of a Virginia owned motor vehicle, who had complied with the laws of the State of Virginia in re-

spect to the registration of motor vehicles and the licensing of operators and was exempt from compliance with the District of Columbia law relating to the issuance of operator's permits as set forth in Section 7 and Section 13 (d) of the Traffic Act of said District, by reason of the provisions of Section 8, paragraphs (a) and (b), relating to non-residents, and that in view of the prior decision by the Court of Appeals in the case of King vs. The District of Columbia, 51 Appeals D. C., 160, rendered January 22, 1922, defendant was within his rights in operating a motor vehicle in the District of Columbia with Virginia tags and registration card.

Thereupon the Court, Honorable John P. McMahon presiding, overruled said motion, stating that no agreement had been shown to exist between the State of Virginia and the District of Columbia, whereby residents of that State and the District are permitted and entitled to operate motor vehicles after revocation of permits, nor did such right exist as a matter of reciprocity, and that Section 8 of the District Traffic Act could not and did not apply because Section 13 (a) specifically prohibits any individual from [fol. 10] operating a motor vehicle in the District during the period for which his operator's permit had been revoked or suspended, thus differentiating the King case, supra, from the instant one because in the former, such an agreement was shown to exist and was the basis for that decision, and further because of the fact that King was charged with operating an automobile without a District permit under a Commissinoners' regulation, and not during the time such permit had been revoked, no such violation being known to law at that time in the District.

Whereupon defendant, through his attorney, S. McComas Hawken, noted an exception to the said ruling of the Court and gave notice of his intention to apply to the Court of Appeals for a writ of error.

Thereupon the jury were instructed that if they believed under the evidence that the defendant did at one time have a District of Columbia operator's permit and that permit was revoked and had not been restored to him on the 3rd day of September, 1928, and he was operating a motor vehicle in the District of Columbia on that date, it would be their duty to bring in a verdict of guilty.

Whereupon the jury, after retiring to consider the case, returned with a verdict of guilty as charged, on the same day, and the Court, Honorable John P. McMahon presiding, then and there sentenced defendant to serve 30 days in the Washington Asylum and Jail, and counsel for defendant thereupon noted an exception in open court to the judgment of the Court and gave notice of defendant's intention of applying to the Court of Appeals of the District of Columbia for a writ of error.

Comes now the defendant, by his counsel, S. McComas Hawken, and prays the Court to sign this bill of exceptions and the same is signed and settled, now for then, and made a part of the record in this cause this 28th day of January, 1929.

John P. McMahon, Judge.

[fol. 11] In Police Court of the District of Columbia

[Title omitted]

Assignment of Error—Filed Jan. 14, 1929

The assignment of error relied upon in this appeal is as follows:

That the Court erred in instructing the jury that no reciprocity under the Traffic Laws of the District of Columbia existed between the District of Columbia and the State of Virginia.

(Signed) Hawken & Havell, Attorneys for Defendant, by H. F. Hawken.

[File endorsement omitted.]

In Police Court of the District of Columbia

Writ of Error

United States of America, ss:

The President of the United States to the Honorable John P. McMahon, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police

Court, before you, between District of Columbia, plaintiff, and Charles H. Fred, defendant, Information No. 128,933, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you [fols. 12 & 13] send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the First day of February, in the year of our Lord one thousand nine hundred and twenty-nine.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

Allowed by Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 14] Minute entry of argument and submission May 8, 1929, omitted in printing.

[fol. 15] In Court of Appeals of the District of Columbia

No. 4916

Charles H. Fred, alias Harry C. Fred, Plaintiff in Error,

vs.

District of Columbia, Defendant in Error

Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices

Writ of Error to the Police Court of the District of Columbia

Opinion—Filed June 3, 1929

Mr. Justice Robb delivered the opinion of the Court:

In 1926 plaintiff in error was a resident of the District and the holder of a District permit to operate a motor vehicle. On December 15th of that year the permit was revoked.

In April of 1928 he became a bona fide resident of the State of Virginia. In August of that year there was regularly issued to him in that State a motor vehicle registration card entitling him to operate a motor vehicle in the State of Virginia. In addition to this registration card, the Virginia authorities also issued to him automobile license tags for his machine. In September, following, and while the Virginia operator's permit was in force, and while he was temporarily in the District of Columbia and driving the automobile equipped with Virginia tags, he was arrested and charged with driving a motor vehicle in the District "during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had [fol. 16] been revoked and suspended by the Director of Traffic." He was subsequently tried and convicted.

In King v. District of Columbia, 51 App. D. C. 160, 277 F. 562, King, after his District permit to operate an automobile had been revoked, became a resident of the State of Virginia and there obtained a driver's permit and registration tags. He was subsequently arrested in the District

and charged with driving an automobile without a permit. The Act of March 3, 1917 (39 Stat. 1004, 1012), provided "that motor vehicles, owned or operated by persons not legal residents of the District of Columbia but who shall have complied with the laws of the State of their legal residence requiring the registration of motor vehicles or licensing of operators thereof * * * shall not be required to be licensed or registered * * * under the laws and regulations of the District if the State in which the owner or operator of such motor vehicle has his legal residence extends the same privilege to the motor vehicle owned or operated by legal residents of the District of Columbia." It appeared that the State of Virginia extended the same privilege to motor vehicles owned or operated by legal residents of the District.

The Court said:

"It appears, then, that at the time of defendant's arrest there was an agreement between the District and Virginia providing that a person entitled to operate a motor vehicle in Virginia was entitled to operate one in the District without having a District driver's permit. The argument of [fol. 17] counsel for the District seems to be that this agreement was not authorized by the act of Congress, for they say that *the only question involved is whether or not the act authorized the operation of a motor vehicle in the District by a nonresident whose District operator's permit had been revoked.* The agreement does not exclude such a person from its protection. Nothing is said therein about a nonresident whose permit had been revoked. It provides broadly that any one legally entitled to operate a motor vehicle in Virginia is entitled to do so in the District without a District driver's permit, so long as that State extends the same privilege to residents of the District. King came squarely within the agreement, and if it is valid he was wrongfully convicted." (Italics ours.)

The Court found that, although the statute was inartificially drawn, the agreement between the District and the State expressed correctly its meaning, and that it was not necessary to "license the orepator" or "register the vehicle." The judgment of conviction was therefore reversed.

The opinion in the King case was rendered in 1921. Subsequently there was enacted the Traffic Act of March 3, 1925 (43 Stat. 1119), which was amended by the Act of July 3, 1926 (44 Stat. Pt. 2, 812). Sec. 8 of the Act of 1925 provides that "the owner or operator of any motor vehicle who is not a legal resident of the District, and who has com-
[fol. 18] plied with the laws of any State, * * * in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 7 (requiring District operators' permits) and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District." The section charges the Director of Traffic with the duty of ascertaining whether a similar privilege is extended to legal residents of the District in such States, and to cause his findings to be promulgated. This he has done.

It thus appears that the Act of 1925 removed the ambiguity which the Court in the King case found to exist in the Act of 1917, and expressly relieved the non-resident owner or operator of a motor vehicle, who has complied with the laws of his State respecting registration and operators' licenses, from either registering his vehicle here or obtaining a local operator's permit, provided only that similar privileges are extended to residents of the District in that State.

As observed in the King case, "we may say that our holding does not relieve a nonresident operator of amenability to valid traffic regulations. If guilty of negligence or other infraction of the law, he may be punished." See Sec. 13 (c), Act of 1925.

[fol. 19] The decision in the King case is squarely in point and decisive of the issue here.

The judgment is reversed, with costs, and the cause remanded.

Reversed.

[File endorsement omitted.]

[fol. 20] In Court of Appeals of District of Columbia, April Term, 1929

No. 4916

Charles H. Fred, alias Hamilton C. Fred, Plaintiff in Error,

vs.

District of Columbia

In Error to the Police Court of the District of Columbia

Judgment—June 3, 1929

This cause came on to be heard on the transcript of the record from the Police Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Police Court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby remanded to the said Police Court.

Per Mr. Justice Robb, June 3, 1929.

[fol. 21] In Court of Appeals of the District of Columbia

[Title omitted]

Designation of Record—Filed July 2, 1929

The Clerk of the Court of Appeals will include the following on petition for Certiorari to the Supreme Court of the United States in its designation of the record in this case, to wit:

1. The printed record in the Court of Appeals.
2. Argument of cause.
3. Opinion of the Court.
4. Judgment.
5. This designation.

William Bride, Edward W. Thomas, Attorneys for District of Columbia.

Service of copy of the aforegoing acknowledged this 2nd day of July, 1929.

Hawkin & Harell, Attorney- for Plaintiff in Error,
per A. L. H.

[fol. 22] [File endorsement omitted.]

[fol. 23] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 24] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,360. Court of Appeals, District of Columbia. Term No. 229. District of Columbia, petitioner, vs. Charles H, Fred, alias Hamilton C. Fred. Petition for writ of certiorari and exhibit thereto. Filed July 10, 1929. File No. 34,360.

FILE COPY

FILED
JUL 10 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 229

DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, PETITIONER,

vs.

CHARLES H. FRED, *alias* HAMILTON C. FRED, DEFENDANT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

WILLIAM W. BRIDE,
Corporation Counsel,
EDWARD W. THOMAS,
Assistant Corporation Counsel,
Attorneys for Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No.

DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, PETITIONER,

vs.

CHARLES H. FRED, *alias* HAMILTON C. FRED, DEFENDANT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the District of Columbia, a municipal corporation, by its Commissioners, Proctor L. Dough-

erty and William B. Ladue, and shows to the Court as follows: On March 3, 1925 (43 Stats. 1119), there was approved an Act of Congress entitled "An Act to provide for the regulation of motor-vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes (*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*), That this Act may be cited as the 'District of Columbia Traffic Act 1925' ", and an amendment thereto enacted July 3, 1926 (44 Stats. 812), entitled "An Act to amend the Act known as the 'District of Columbia Traffic Act, 1925' approved March 3, 1925, being Public Numbered 561, Sixty-Eighth Congress, and for other purposes." These Acts specifically repealed, by Section 16 (*a*) thereof all other acts and regulatoins relating to the controlling of vehicles and vehicle traffic in the District of Columbia. In pursuance of the authority of said statutes the District of Columbia, in its proper person, instituted a criminal proceeding against the defendant, by way of an information filed in the police court of the District of Columbia, charging him with operating a motor vehicle in the District of Columbia during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had been revoked and suspended by the Director of Traffic, in violation of Section 13 (*d*) of the Traffic Act for the District of Columbia, which provides as follows:

> "SEC. 13 (*d*). Any individual found guilty of operating a motor vehicle in the District of Co-

lumbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this Act shall, for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both."

November 8, 1926, defendant, a resident of the District of Columbia, was issued a permit by the Director of Traffic of the District of Columbia to operate a motor vehicle therein. This permit was revoked by the Director of Traffic on December 15, 1926, under the authority of Section 13 (*a*) of the Traffic Act of March 3, 1925. On December 26, 1926, the defendant was personally served with a copy of the said order of revocation, and no application was ever made by him to the Commissioners of the District of Columbia for a review of the said order of revocation, nor by him to the Court of Appeals for a review of the said order of revocation. Subsequently the defendant was arrested (September 3, 1928) while operating a motor vehicle in the District of Columbia after having been in collision with another vehicle, defendant's permit and right to operate a motor vehicle in the District of Columbia not having been restored to him.

After the revocation of his District of Columbia operator's permit by the Director of Traffic, the defendant became a resident of the State of Virginia. On August 6, 1928, said State issued to the defendant a motor vehicle registration card No. 540,221, which authorized defendant to operate a motor vehicle in the

State of Virginia. The defendant had with him at the time of his arrest on September 3, 1928, said registration card and had tags of the State of Virginia on his motor vehicle. Defendant had been operating said motor vehicle in the District of Columbia for about four hours previous to the time of his arrest.

The case was tried before a jury.

After the case was closed by the District of Columbia and the defendant, the following instruction was asked on behalf of the defendant:

> "That upon all the testimony, as a matter of law, the jury should be instructed to return a verdict of not guilty, on the ground that the defendant, Charles H. Fred, alias Hamilton C. Fred, was the operator of a Virginia owned motor vehicle, who had complied with the laws of the State of Virginia in respect to the registration of motor vehicles and the licensing of operators and was exempt from compliance with the District of Columbia law relating to the issuance of operators' permits as set forth in Section 7 and Section 13 (*d*) of the Traffic Act of said District, by reason of the provisions of Section 8, paragraphs (*a*) and (*b*), relating to non-residents, and that in view of the prior decision by the Court of Appeals of the District of Columbia in the case of King *vs.* The District of Columbia, 51 Appeals D. C. 160, rendered January 22, 1922, defendant was within his rights in operating a motor vehicle in the District of Columbia with Virginia tags and registration card."

The court refused the requested instruction, to which refusal the defendant, by his counsel, there and then duly noted an exception.

The court instructed the jury as follows:

> "That if they believed under the evidence that the defendant did at one time have a District of Columbia operator's permit and that permit was revoked and had not been restored to him on the 3rd day of September, 1928, and he was operating a motor vehicle in the District of Columbia on that date, it would be their duty to bring in a verdict of guilty."

To the giving of this instruction defendant, by his counsel, duly noted an exception.

The jury, after retiring to consider the case, returned a verdict of guilty; and sentence was thereupon passed upon the defendant by the court.

The defendant was granted a writ of error by the Court of Appeals of the District of Columbia, and on June 3, 1929, the judgment of the Police Court was reversed upon the authority of King *v.* The District of Columbia, 51 App. D. C. 160. On June 13, after due application made by the District, the Court of Appeals recalled its mandate in the instant case to afford the District of Columbia opportunity to apply to the Supreme Court of the United States for a writ of certiorari.

In the King case the Court of Appeals had under consideration two things, and two things only:

> (1) The following provision from "An Act making appropriations to provide for the ex-

penses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March 3, 1917 (39 Stat. at L. 1004, 1012):

"On and after December thirty-first, nineteen hundred and seventeen, all licenses, including identification tags and registrations, for motor vehicles heretofore granted shall expire and become null and void, and on and after January first, nineteen hundred and eighteen, there shall be charged annually for the licensing and registration of motor vehicles the following fees, which shall be paid annually to the collector of taxes of the District of Columbia and which shall include registration and the furnishing of an identification number tag—$5 for each vehicle of more than twenty-four horsepower and not exceeding thirty horsepower, $10 for each vehicle of more than thirty horsepower, $3 for each vehicle of twenty-four horsepower or less, and $2 for each motor cycle or similar motor vehicle: * * *: Provided further, that motor vehicles, owned or operated by persons not legal residents of the District of Columbia but who have complied with the laws of the State of their legal residence requiring the registration of motor vehicles or licensing of operators thereof and the display of identification or registration numbers on such vehicles, and which identification numbers shall be displayed on such motor vehicles as provided by the laws and regulations of the District of Columbia while used or operated within the District, shall not be required to be licensed or registered or bear

other identification numbers under the laws and regulations of the District if the State in which the owner or operator of such motor vehicle has his legal residence extends the same privilege to the motor vehicles owned or operated by legal residents of the District of Columbia; * * *."

(2) The following motor-vehicle reciprocity agreement between the District of Columbia and the State of Virginia:

"Anyone legally entitled to operate a motor vehicle in the State of Virginia shall be entitled to operate such vehicle in the District of Columbia, without having District of Columbia license tags, and without having a District of Columbia driver's permit, so long as the Virginia authorities permit residents of the District of Columbia, legally entitled to operate vehicles there, to operate same within the State of Virginia, without Virginia license tags, and without a Virginia driver's permit. * * * That the State of Virginia, in which the defendant has his legal residence, extends the same privilege to the motor vehicles owned or operated by legal residents of the District of Columbia."

The court construed the above-mentioned provisions of the Act of March 3, 1917, to apply both to the vehicle owned or operated by a non-resident, as well as to the non-resident owner or operator himself. The court found that the District of Columbia had not, in said motor-vehicle reciprocity agreement, excluded residents of the State of Virginia whose District of Columbia operators' permits had been revoked. The court

in its opinion said: "We believe that the agreement between the District and the State expresses correctly the meaning of the statute." The court held that King came squarely within the agreement and had the right, as a resident of the State of Virginia, to operate his motor vehicle in the District notwithstanding the previous revocation of his District operator's permit.

More than three years after the King case was decided by the Court of Appeals, Congress passed an Act entitled "An Act to provide for the regulation of motor vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes," approved March 3, 1925 (43 Stats. 1119), which Act was amended by the Act of July 3, 1926 (44 Stats. 812).

Section 8 (*a*) of said Act provides as follows:

> "The owner or operator of any vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the director has previously found that a similar privilege is extended to legal residents of the District by

such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The director shall from time to time ascertain such privileges and cause his findings to be promulgated."

Section 8 (*b*) provides as follows:

"Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not rerequire the issuance of a motor vehicle operator's permit, or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 7 of this Act."

The defendant in the instant case was charged with operating a motor vehicle in the District during the period for which his operator's permit was revoked, in violation of said Section 13 (*d*) of the Traffic Act of March 3, 1925. The Court of Appeals, in its opinion, says:

"• • • It thus appears that the Act of 1925 removed the ambiguity which the Court in the

> King case found to exist in the Act of 1917, and expressly relieved the non-resident owner or operator of a motor vehicle, who has complied with the laws of his State respecting registration and operator's licenses, from either registering his vehicle here or obtaining a local operator's permit, provided only that similar privileges are extended to residents of the District in that State. * * *. The decision in the King case is squarely in point and decisive of the issue here."

The Court of Appeals in its opinion refers to only two sections of the Traffic Act of March 3, 1925, as amended by the Act of July 3, 1926, namely, said Section 8 and Section 13 (*c*). There are more than thirteen sections in said Traffic Act, and it is respectfully submitted that these sections either were not sufficiently stressed before the Court of Appeals or the court departed from or disregarded the elementary principles with respect to the construction of statutes, as laid down in its own decisions and the decisions of the Supreme Court of the United States, that "The intention of the legislature, when properly ascertained, must govern in the construction of every statute. For such purposes the whole statute must be examined. Single sentences and single provisions are not to be selected and construed by themselves, but the whole must be taken together." Pollard *v.* Bailey, 20 Wall. 525, 526. See also Miles Planting Co. *v.* Carlisle, 5 App. D. C. 138, 144; Peck *v.* Jenness, 7 How. 612; Peck *v.* Boisdore's Heirs, 8 How. 113; and Brown *v.* Ducheme, 19 How. 183.

Notwithstanding the express declaration by Congress in Section 13 (*b*) of the Traffic Act of March 3, 1925, that Fred's operator's permit having been revoked by the Director of Traffic, no new permit should be issued to him for at least six months, except in the discretion of the Director; and notwithstanding the further express declaration by Congress in Section 7 (*a*) that if the Director believed that the reissuance of a permit to Fred might prove a menace to public safety, he might refuse the reissuance thereof; and notwithstanding the further express declaration by Congress in Section 13 (*d*) that if Fred was found guilty of operating a motor vehicle in the District during the period for which his operator's permit was revoked he should be punished, for each such offense, by a fine of not less than $100 nor more than $500, or imprisoned not less than thirty days nor more than one year, or both, the Court of Appeals has decided that Congress intended under the provisions of Section 8 of the Act to permit Fred to do the very thing which Congress itself had already expressly declared he should not do, namely, operate a motor vehicle in the District of Columbia during the period for which his operator's permit was revoked, and to escape the very punishment which Congress itself had already provided he should suffer if he was found guilty of operating a motor vehicle in the District during the period for which his operator's permit was revoked.

The Transcript of Record before the Court of Appeals showed that Fred had previously been convicted as follows:

In the year 1922: for driving an automobile while intoxicated (twice);

In the year 1923: for driving an automobile while intoxicated; for speeding; for driving on wrong side of street; for driving with illegal brakes; for making illegal turn in street;

In the year 1925: for speeding; for reckless driving;

In the year 1927: for reckless driving;

In the year 1928: for operating motor vehicle during the period for which his operator's permit was revoked; and for operating while under the influence of liquor.

The effect of the decision of the Court of Appeals is that the citizens of the District of Columbia have absolutely no protection for their own safety or the safety of their property, because no matter what offenses against the traffic laws are committed by individuals holding operators permits issued by the Director, be it reckless driving, leaving the scene of a collision without making identity known, operating while under the influence of intoxicating liquor or drugs, operating a motor vehicle equipped with a smoke screen, etc., it is useless for the Director of Traffic to revoke and seek to take away the right of such individual to operate motor vehicles in the District of Columbia, because the Court of Appeals says that if such individuals, after the revocation of their permits by the Director, adopt the convenient expedient of stepping across the line into the State of Virginia, or any other State, and there registering their motor vehicle and

procuring from said State an operator's permit, they may come back and operate their motor vehicle in the District to their heart's content.

If Fred had continued to reside in the District of Columbia after the revocation of his operator's permit by the Director of Traffic, instead of removing to the State of Virginia, and had operated a motor vehicle in the District during the period for which his operator's permit was revoked, could anyone deny that he would have been amanable to the provisions of Section 13 (*d*) of the Traffic Act or that his conviction thereunder was proper?

After the revocation of his operator's permit by the Director of Traffic Fred had a remedy specially provided by Congress in the Traffic Act. Under Section 13 (*a*) Fred was granted the right of appeal to the Commissioners of the District of Columbia for a review of the order of revocation made by the Director, and in the event the Commissioners sustained the order of the Director it was provided in said section that Fred might apply to the Court of Appeals for a writ of error to review the order of the Director or the decision of the Commissioners. It was also provided in said section that the decision of the Court of Appeals *should be final* and that an application to said court for a writ of error *should not operate as a stay of such order of the Director of the decision of the Commissioners.*

Suppose Fred had appealed to the Commissioners for a review of the order of revocation made by the Director and the Commissioners had sustained the

order of the Director; that thereupon Fred had applied for and been granted a writ of error by the Court of Appeals, and that upon a review that court decided that Fred's operator's permit was properly revoked by the Director.

Following the decision of the Court of Appeals to its logical conclusion, if Fred, within a day or two after he filed with the Commissioners an appeal from the order of the Director, had stepped across the line in the State of Virginia and there registered his motor vehicle and procured from that State a registration card, he would have the right, under said Section 8, to operate a motor vehicle in the District not only during the time his appeal was pending before the Commissioners but also during the time his appeal was pending in the Court of Appeals and even after the Court of Appeals had finally decided that his operator's permit had been properly revoked by the Director. And this, notwithstanding the fact that Congress in said Section 13 (*a*) expressly provides that an application to the Court of Appeals for a writ of error *shall not operate as a stay of such order of the Director or the decision of the Commissioners,* and that *the decision of said court shall be final.*

It is intimated by the Court of Appeals in its decision that the remedy for the above situation is provided by Section 13 (*c*) of the Traffic Act, and that if Fred, while operating a motor vehicle in the District *as a resident of the State of Virginia,* should violate any provision of the Traffic Act requiring revocation or suspension for any period of the operator's permit,

upon his conviction thereof, the Director could suspend for such period if he saw fit the right of Fred to operate in the District under the registration card of the State of Virginia and notify the proper Virginia authorities of such suspension.

The above remedy, however, would be available to the Director only in the event that Fred while operating in the District as a resident of the State of Virginia committed some offense, other than operating during the period for which his District of Columbia operator's permit was revoked, which called for the revocation of suspension of the operator's permit. And furthermore, it would be a useless thing for the Director to suspend the right of Fred to operate in the District under the registration card issued to him by the State of Virginia. It would only be necessary for Fred to step across the line into the State of Maryland and there register his motor vehicle and procure from that State an operator's permit. He would thereupon, under the decision of the Court of Appeals, be the owner or operator of a motor vehicle who is not a legal resident of the District who had complied with the laws of the State of Maryland in respect to the registration of his motor vehicle and the licensing of himself as the operator, and would have the right, under said Section 8 of the Traffic Act, to operate a motor vehicle in the District until such time as he again committed such an offense as calls for the revocation or suspension of the operator's permit. When the Director of Traffic suspended his right to operate in the District as a resident of the State of Maryland he

could move into another State and keep up this mode of procedure indefinitely.

A careful consideration of said Section 13 (*c*) clearly shows that Congress did not intend any such absurd results. This section does not apply to individuals having operators' permits issued by the Director which have been revoked or suspended, but is expressly confined to "Any individual not having an operator's permit issued by the Director but having in his immediate possession an operator's permit issued by any State, Territory, or possession of the United States, or foreign country or political subdivision thereof."

In order to endeavor to ascertain the intent of Congress relative to the right to operate motor vehicles in the District of Columbia, the issuance, revocation and suspension of operators' permits, and of the right to operate, it is necessary to consider the following provisions of the Act entitled "An Act to provide for the regulation of motor-vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes," approved March 3, 1925, as amended by the Act of July 3, 1926:

In Section 6 (*b*), after authorizing the Director to make reasonable regulations with respect to the issuance and revocation of operators' permits, Congress in Section 7 (*a*) clearly expresses its intention that the Director shall limit the issuance or reissuance of operators' permits to such individuals as are found by him, after examination, to be mentally, morally, and physically qualified to operate motor vehicles in such manner as not to jeopardize the safety of individuals

or property; and Congress specifically provides in this Section:

> "Should the Director believe that the issuance or reissuance of an operator's permit in accordance with the provisions of this Act may prove a menace to public safety, he may, in his discretion, refuse the issuance or reissuance thereof."

In Section 7 (*e*) Congress provides that no individual shall operate a motor vehicle in the District of Columbia, except as provided in Section 8, without first having obtained an operator's permit under the provisions of the Act.

In Section 8 (*a*) Congress provides that the owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall subject to the provisions of this section be exempt from compliance with Section 7 of the Act and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District.

In said Section 8 (*a*) Congress further provides that such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Director has previously found that a similar privilege is extended

to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof, and that the Director shall from time to time ascertain such privileges and cause his findings to be promulgated.

In Section 8 (*b*) Congress provides that any operator of a motor vehicle who is not a legal resident of the District and does not have in his immediate possession an operator's permit issued by the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit, or (2) he has submitted to examination within seventy-two hours after entering the District and obtained an operator's permit in accordance with the provisions of Section 7 of the Act.

In said Section 8 (*b*) Congress further provides that any individual who violates any provisions of this subdivision shall, upon conviction thereof, be fined not less than $5 nor more than $50 or imprisoned not more than 30 days, or both.

In Sections 9 (*c*), 9 (*d*), and 10 (*c*) Congress provides that any individual, resident or non-resident, convicted of a second or subsequent offense of reckless driving, a third or subsequent offense of speeding, or of fleeing from the scene of an accident, or operat-

ing while under the influence of intoxicating liquor or drugs, shall be subject to certain specified penalties; and if such individual has an operator's permit issued by the Director the Clerk of the Police Court shall certify forthwith such convictions to the Director who shall thereupon revoke the operator's permit of such individual.

After thus providing for the mandatory revocation by the Director of the operators' permits of such individuals, Congress, anticipating there would undoubtedly be other instances in which holders of permits issued by the Director would become mentally, morally, and physically unqualified to operate motor vehicles in the District in such manner as not to jeopardize the safety of individuals or property, in Section 13 (*a*) provided that "Except where for any violation of this Act the revocation of the operator's permit is mandatory, the director, or any assistant whom he may designate for the purpose, may, with or without a prior hearing revoke or suspend an operator's permit for any cause which he, or such assistant, may deem sufficient." In these instances Congress provided, in this section, for a review by the Commissioners of the District of Columbia of any order of revocation or suspension made by the Director, or his assistant, and also provided that in the event the Commissioners shall sustain the order of the Director, or his assistant, the individual whose permit shall be denied, suspended, or revoked may apply to the Court of Appeals of the District of Columbia for a writ of error to review the order of the Director, or his assistant, complained of or the

decision of the Commissioners. Congress further provided in this section that the decision of the Court of Appeals shall be final, and that an application to said court for a writ of error *shall not operate as a stay of such order of the Director, or his assistant, or the decision of the Commissioners.*

In Section 13 (*b*) it is provided that in case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least six months after the revocation except in the discretion of the director.

It is perfectly plain and apparent from a consideration of the above-mentioned section of the Traffic Act that Congress was dealing with two separate and distinct classes of individuals, namely:

(1) Individuals *having operators' permits issued by the Director of Traffic* which were subsequently revoked or suspended by the Director, either because of the violation of some provision of the Act requiring the mandatory revocation thereof or for some cause which the Director, or his assistant, had deemed sufficient; and

(2) Individuals *not having operators' permits issued by the Director,* and who are not legal residents of the District but who have complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, *having motor vehicle reciprocity relations with the District of Columbia* in respect of the registration of motor vehicles and the licensing of operators thereof.

Congress made both residents and non-residents punishable for any violation of the Act.

Congress has specifically provided that upon conviction of any individual of a second or subsequent offense of reckless driving, a third or subsequent offense of speeding, or of fleeing from the scene of an accident, or of operating while under the influence of intoxicating liquor or drugs, the Clerk of the Police Court shall certify forthwith such convictions to the Director, and if such individual is the holder of a permit issued by the Director he shall thereupon revoke such permit.

Congress has provided that except where for any violation of the Act revocation of the operator's permit is mandatory, the Director, or any assistant whom he may designate for the purpose, may revoke any operator's permit for any cause which he, or such assistant, may deem sufficient.

The defendant, Fred, was the holder of a permit issued by the Director of Traffic of the District of Columbia. This permit was subsequently revoked by the Director, under the authority conferred upon him by Congress in the Traffic Act. Congress expressly provided in Section 13 (*b*) that, Fred's permit having been revoked, no new permit should be issued to him for at least six months after such revocation, except in the discretion of the Director. The Director was given power and authority by Congress not only to revoke Fred's operator's permit but, under Section 7 (*a*), to refuse the reissuance thereof if he believed that a reissuance thereof to Fred would prove a menace to public safety.

How then can any serious consideration be given to the contention that Congress in said Section 8 of the Act intended to confer upon Fred the right to operate a motor vehicle in the District during the period for which his operator's permit was revoked, provided that after the revocation of his District operator's permit he adopted the convenient expedient of stepping into the adjoining State of Virginia and there registering his motor vehicle and procuring from that State a registration card authorizing him to operate a motor vehicle in that State?

Such a construction would defeat the very object and policy of Congress and is foreign and abhorrent to the elementary principles of statutory construction as laid down by the Court of Appeals of the District of Columbia and the Supreme Court of the United States in the cases hereinbefore referred to.

If there can possibly be any further room for doubt as to the intention of Congress, as expressed in said Section 8, it is set at rest, we respectfully submit, by a consideration of Sections 13 (*c*) and (*d*) of the Act.

In Section 13 (*c*) Congress provides that any individual *not having an operator's permit issued by the Director* but having in his immediate possession an operator's permit issued by any State, Territory, or possession of the United States, or foreign country or political subdivision thereof, shall, upon conviction of a violation of any provision of this Act requiring the revocation or suspension for any period of the operator's permit, *have his right to operate in the District under the permit of such State, Territory, or posses-*

sion of the United States, or foreign country or political subdivision thereof, suspended for such period as the Director may prescribe, and the proper authority at the place of issuance of the permit shall be notified of such suspension and the reason therefor.

In Section 13 (*d*) it is provided that any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended, *or for which his right to operate is suspended,* shall, for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both.

Thus it appears that, having already provided in previous sections of the Act for the *revocation and suspension of permits issued by the Director,* and for the punishment of individuals found guilty of operating motor vehicles in the District *during the period of such revocations,* Congress, in said Section 13 (*c*), takes up the matter of *bona fide* non-residents of the District *not having operators' permits issued by the Director* but having in their immediate possession operators' permits issued by any State, Territory, or possession of the United States, or foreign country or political subdivision thereof. Congress, in effect, says to such *bona fide* non-residents that they may come into the District under the motor vehicle reciprocity relations provided for in Sections 8 (*a*) and 8 (*b*) of the Act, and enjoy the same privileges as are extended in their States, Territories, etc., to legal residents of the District, until such time as they are convicted of any

provision of the Traffic Act requiring the revocation or suspension for any period of the operator's permit. Congress provides that upon conviction of any such *bona fide* non-resident of such offense the right of such non-resident to operate a motor vehicle in the District under the permit of his State, Territory, etc., shall be suspended for such period as the Director may prescribe. In Section 13 (*d*) Congress provides that if any such individual is found guilty of operating a motor vehicle in the District *during the period for which his right to operate under the permit of his State, Territory, etc., is suspended*, he shall, for each such offense, be subject to the penalty therein provided.

Wherefore, it is perfectly apparent that Congress did not intend, under the provisions of Section 8 of the Traffic Act, to confer upon the defendant Fred the right to operate a motor vehicle in the District of Columbia during the period for which his District operator's permit was revoked.

It is therefore respectfully submitted that because the Court of Appeals of the District of Columbia has construed the Traffic Act according to principles of construction directly in the teeth of and contrary to the elementary principles of construction laid down by the Supreme Court of the United States and the Court of Appeals itself in the cases hereinbefore cited, and because as a result of the construction placed upon the Traffic Act by the Court of Appeals there is afforded no real protection for the lives and property of the citizens of the District of Columbia upon its streets,

and in the interest of public policy, this Honorable Court should grant the writ of certiorari herein and hereby applied for.

PROCTOR L. DOUGHERTY,
WILLIAM B. LADUE,
Commissioners of the District of Columbia.

WILLIAM W. BRIDE,
EDWARD W. THOMAS,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

Proctor L. Dougherty and William B. Ladue being first duly sworn, depose and say that they have read the foregoing petition by them subscribed and know the contents thereof; that the matters and things therein stated upon personal knowledge are true and those stated upon information and belief they believe to be true.

PROCTOR L. DOUGHERTY,
WILLIAM B. LADUE,
Commissioners of the District of Columbia.

Subscribed and sworn to before me this 9th day of July, 1929.

[SEAL.]

Daniel Yarges
[illegible]
Notary Public, D. C.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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1. Issue is the scope of the intent of Congress as expressed as a whole in the Traffic Act for the District of Columbia and not by selecting any one section or clause thereof for construction.

Section 8 (*a*) of the Traffic Act approved March 3, 1925 (43 Stats. 1119), provides as follows:

> "The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, shall, subject to the provisions of this section, be exempt from compliance with Section 7 and with any provisions of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The Director from time to time shall ascertain such privileges and cause his findings to be promulgated."

Section 8 (*b*) thereof provides as follows:

> "Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit, or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of Section 7 of this Act. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than $5 nor more than $50 or imprisoned not less than 30 days, or both."

It has been repeatedly held by this Honorable Court as well as by the Court of Appeals of the District of Columbia that the intention of Congress as expressed in any particular Act can only be disclosed by construing it as a whole, as distinguished from the stressing of any particular word, phrase, clause, or section thereof.

Defendant was convicted in the Police Court of the District of a violation of Section 13 (*d*) of the Traffic Act, which provides as follows:

> "Any individual found guilty of operating a motor vehicle in the District of Columbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this Act shall, for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both."

What was the intention of Congress as to the operation of motor vehicles in the District of Columbia by residents and non-residents? We cannot arrive at that intention by confining ourselves to a consideration of the above-mentioned sections, but must look to the provisions of the whole law, and to its object and policy.

In Miles Planting Company *v.* Carlisle, 5 App. D. C. 138, 144, it was said:

> "It is an undoubted rule of construction that the special meaning or purpose that might under some circumstances be found to lurk in a single word or part of a sentence must yield to the plain intention disclosed by the whole."

In Peck *v.* Jenness, 7 How. 612, the Supreme Court of the United States said:

> "But it is among the elementary principles with regard to the construction of statutes, that every section, provision, and clause of a statute shall be expounded by a reference to every other; and, if possible, every clause and provision shall avail, and have the effect contemplated by the legislature. One portion of a stat-

ute should not be construed to annul or destroy what has been clearly granted by another. The most general and absolute terms of one section may be qualified and limited by conditions and exceptions contained in another, so that all may stand together."

In Peck *v.* Boisdore's Heirs, 8 How. 113, the Supreme Court of the United States said:

> "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."

In Brown *v.* Ducheme, 19 How. 183, the Supreme Court of the United States said:

> "The general words used in the clause of the patent laws granting the exclusive right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal—because it is evident that in many cases it would defeat the object which the legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution

> the will of the legislature, as thus ascertained, according to its true intent and meaning."

In Pollard *v.* Bailey, 20 Wall. 525, 526, the Supreme Court of the United States said:

> "The intention of the legislature, when properly ascertained, must govern in the construction of every statute. For such purpose the whole statute must be examined. Single sentences and single provisions are not to be selected and construed by themselves, but the whole must be taken together."

Let us now take up and analyze these various sections of the Traffic Act, relative to the right to operate motor vehicles in the District of Columbia, the issuance, revocation, and suspension of operators' permits, and of the right to operate, and the reissuance thereof.

In Section 6 (*b*), after authorizing the Director to make reasonable regulations with respect to the issuance and revocation of operators' permits, Congress in Section 7 (*a*) clearly expresses its intention that the Director shall limit the issuance or reissuance of operators' permits to such individuals as are found by him, after examination, to be mentally, morally, and physically qualified to operate motor vehicles in such manner as not to jeopardize the safety of individuals or property; and Congress specifically provides in this section:

> "Should the Director believe that the issuance or reissuance of an operator's permit in ac-

cordance with the provisions of the Act may prove a menace to public safety, he may, in his discretion, refuse the issuance or reissuance thereof."

In Section 7 (*e*) Congress provides that no individual shall operate a motor vehicle in the District, except as provided in Section 8, without first having obtained an operator's permit under the provisions of the Act.

In Section 8 (*a*) Congress provides that the owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of that section, be exempt from compliance with Section 7 of the Act and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District.

In said Section 8 (*a*) Congress further provides that such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof, and that the Director shall from time to time ascertain such privileges and cause his findings to be promulgated.

In Section 8 (*b*) Congress provides that any operator of a motor vehicle who is not a legal resident of the District and does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, *having motor vehicle reciprocity relations with the District,* shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit, or (2) he has submitted to examination within seventy-two hours after entering the District and obtained an operator's permit in accordance with the provisions of Section 7 of the Act.

In said Section 8 (*b*) Congress further provides that any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than $5 nor more than $50 or imprisoned not more than 30 days, or both.

In Sections 9 (*c*), 9 (*d*), and 10 (*c*) Congress provides that any individual, resident or non-resident, convicted of a second or subsequent offense of reckless driving, a third or subsequent offense of speeding, or of fleeing from the scene of an accident, or operating while under the influence of intoxicating liquor or drugs, shall be subject to certain specified penalties; and if such individual has an operator's permit issued by the Director, the Clerk of the Police Court shall certify forthwith such convictions to the Director, who

shall thereupon revoke the operator's permit of such individual.

After thus providing for the mandatory revocation by the Director of the operators' permits of such individuals, Congress, anticipating there would undoubtedly be other instances in which holders of operators' permits issued by the Director would become mentally, morally, and physically unqualified to operate motor vehicles in such manner as not to jeopardize the safety of individuals or property, in Section 13 (*a*) provided that "Except where for any violation of this Act the revocation of the operator's permit is mandatory, the Director, or any assistant whom he may designate for the purpose, may, with or without a prior hearing, revoke or suspend an operator's permit for any cause which he, or such assistant, may deem sufficient." In these instances Congress provided in this section for a review by the Commissioners of the District of Columbia of any order of revocation or suspension made by the Director, or his assistant, and also provided that in the event the Commissioners shall sustain the order of the Director, or his assistant, the individual whose permit shall be denied, suspended, or revoked may apply to the Court of Appeals of the District of Columbia for a writ of error to review the order of the Director, or his assistant, complained of, or the decision of the Commissioners. Congress further provided in this section that the decision of the Court of Appeals shall be final, and that an application to said court for a writ of error *shall not operate as a*

stay of such order of the Director, or his assistant, or the decision of the Commissioners.

2. Section 13 (d) is broad enough, and includes non-residents, such as defendant.

It is perfectly plain and apparent from a consideration of the above-mentioned sections of the Traffic Act that Congress was dealing with two separate and distinct classes of individuals, namely:

(1) Individuals *having operators' permits issued by the Director of Traffic,* which permits were subsequently revoked or suspended by the Director, or his assistant, either because of the violation of some provision of the Act requiring the mandatory revocation thereof, or for some cause which the Director, or his assistant, has deemed sufficient; and

(2) Individuals *not having operators' permits issued by the Director* and who are not legal residents of the District but who have complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, *having motor vehicle reciprocity relations with the District of Columbia* in respect of the registration of motor vehicles and the licensing of operators thereof.

Congress has made both residents and non-residents punishable for any violations of the Act.

Congress has specifically provided that upon conviction of any individual of a second or subsequent offense of reckless driving, a third or subsequent offense

of speeding, or of fleeing from the scene of an accident, or of operating while under the influence of intoxicating liquor or drugs, the Clerk of the Police Court shall certify forthwith such convictions to the Director, and if such individual is the holder of a permit issued by the Director, the Director shall thereupon revoke such permit.

Congress has provided that, except where for any violation of the Act revocation of the operator's permit is mandatory, the Director, or any assistant whom he may designate for the purpose, may revoke any operator's permit for any cause which he, or such assistant, may deem sufficient.

The defendant in the instant case was the holder of a permit issued by the Director of Traffic of the District of Columbia. This permit was subsequently revoked by the Director, under the authority conferred upon him by Congress in the Traffic Act. Congress expressly provided in the Act (Section 13 (*b*)) that, the defendant's permit having been revoked, no new permit should be issued to the defendant for at least six months after the revocation, except in the discretion of the Director. The Director has power and authority under the Act, not only to revoke the operator's permit of the defendant, but to refuse the reissuance thereof if he believes that a reissuance thereof to the defendant would prove a menace to public safety.

How then can any serious consideration be given to the contention of the defendant that Congress in Section 8 of the Traffic Act intended to confer upon him the right to operate a motor vehicle in the District of

Columbia during the period for which his operator's permit was revoked, provided that after the revocation of his District of Columbia operator's permit he adopted the convenient expedient of stepping across the line into the State of Maryland and there registering his motor vehicle and having an operator's permit issued to him by that State? Such a construction would defeat the very object and policy of Congress, as expressed in the Traffic Act, and is foreign and abhorrent to the elementary principles of statutory construction as laid down by the Court of Appeals of the District of Columbia and the Supreme Court of the United States in the cases hereinbefore referred to.

If there can possibly be any further room for doubt as to the intention of Congress, it is set at rest, we respectfully submit, by a consideration of Sections 13 (*c*) and 13 (*d*) of the Act.

In Section 13 (*c*) Congress provides that any individual *not having an operator's permit issued by the Director,* but having in his immediate possession an operator's permit issued by any State, Territory, or possession of the United States, or foreign country or political subdivision thereof, shall, upon conviction of a violation of any provision of this Act requiring the revocation or suspension for any period of the operator's permit, *have his right to operate in the District under the permit of such State, Territory, or possession of the United States, or foreign country or political subdivision thereof, suspended for such period as the Director may prescribe,* and the proper authority

at the place of issuance of the permit shall be notified of such suspension and the reason therefor.

In Section 13 (*d*) Congress provides that any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended, *or for which his right to operate is suspended, shall, for each such offense,* be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both.

Thus it appears that, having already provided in previous sections of the Act for *the revocation and suspension of permits issued by the Director of Traffic* and for the punishment of individuals found guilty of operating motor vehicles in the District during the period of such revocation or suspension, Congress, in said Section 13 (*c*), takes up the matter of *bona fide* non-residents of the District *not having operators' permits issued by the Director,* but having in their immediate possession operators' permits issued by any State, Territory, or possession of the United States, or foreign country or political subdivision thereof. Congress, in effect, says to such *bona fide* non-residents that they may come into the District of Columbia under the motor vehicle reciprocity relations provided for in Sections 8 (*a*) and 8 (*b*) of the Act, and enjoy the same privileges as are extended in their States, Territories, etc., to legal residents of the District, until such time as they are convicted of any provision of the Traffic Act requiring the revocation or suspension for any period of the operator's permit. Congress provides

that, upon the conviction of any such *bona fide* non-resident of any such offense, the right of such non-resident to operate a motor vehicle in the District under the permit of any State, Territory, etc., shall be suspended for such period as the Director may prescribe. And in Section 13 (*d*) Congress provides that if any such individual is found guilty of operating a motor vehicle in the District *during the period for which his right to operate is suspended* he shall, *for each such offense,* be subject to the penalties therein provided.

Wherefore, it is respectfully submitted, Congress did not intend under the provisions of Sections 8 (*a*) and 8 (*b*) of the Traffic Act to confer any privileges upon the defendant in the instant case.

When the defendant operated his motor in the District during the period for which his operator's permit was suspended he was not a *bona fide* non-resident, *not having an operator's permit issued by the Director* but having in his immediate possession a registration card for his motor vehicle issued by the State of Virginia. He was in the nature of an impostor. After his permit was revoked by the Director he went over into the State of Virginia and applied for and was issued a registration card by that State. Is it not a reasonable inference or presumption that when he applied to the State of Virginia for a registration card for his motor vehicle he withheld from the proper authorities of that State the fact of the revocation of his permit by the Director of Traffic of the District of Columbia, and the reasons therefor? And was not his

failure so to do a continuing wrong in the nature of a cheat? His claim that he was a *bona fide* non-resident of the District and entitled, under said Section 8 of the Traffic Act, to operate a motor vehicle in the District during the period for which his operator's permit was revoked was at all times wrongful, a fraud upon Congress, and a peril to the citizens of the District of Columbia. Right to operate a motor vehicle in the District may not justly or reasonably be rested on a foundation so abhorrent to public policy (Minneapolis, St. P. & S. S. Ry Co. *v.* Rock, United States Supreme Court Reporter, Volume 49, No. 15, 363, decided May 13, 1929).

3. Differentiation of the King case followed by the Court of Appeals, as contrasted with case of present defendant.

In the King case (51 Appeals D. C., 160) the Court of Appeals construed the Act of March 13, 1917, to apply to the vehicle owned or operated by a non-resident, as well as to the non-resident owner or operator himself; and, finding that the Commissioners in their agreement with the State of Virginia had not excluded residents of such State whose District of Columbia operators' permits had been revoked, held that King came squarely within the agreement and had the right to operate his motor vehicle in the District of Columbia notwithstanding the previous revocation by the Commissioners of his District of Columbia operator's permit. The case was reversed and remanded.

King was convicted of operating an automobile in the District of Columbia *without having a permit to do so,* in violation of the *police regulation* made and promulgated by the *Commissioners* under and by virtue of the police powers conferred upon them by Congress in the Acts of January 26, 1887, and February 26, 1892. At that time there was no police regulation or statute which made it an offense to operate a motor vehicle in the District during the period for which the operator's permit was revoked or suspended.

The King case was decided January 3, 1922. More than three years later, or on March 3, 1925, Congress passed an Act entitled "An Act to provide for the regulation of motor-vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes," which Act was amended by the Act of July 3, 1926. Section 8 of the Traffic Act of March 3, 1925, provided as follows: "The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State * * * in respect of the registration of motor vehicles and the licensing of operators, shall, subject to the provisions of this section, be exempt from compliance with Section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District"; and under this section the Director of Traffic is charged with the duty of ascertaining whether a similar privilege is extended to legal residents of the District in such States, and to cause his findings to be promulgated.

Is the same interpretation to be given to said Section 8 of the Traffic Act of March 3, 1925, as was given by the Court of Appeals in the King case to the Act of Congress of March 13, 1917?

In the King case the Court of Appeals said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution, and that the court believed that the agreement between the District and the State expressed correctly the meaning of the statute, and that the intention of Congress was, therefore, that King should be permitted to operate a motor vehicle in the District notwithstanding the fact that his District of Columbia operator's permit had been revoked.

The section of the Act of March 13, 1917, under consideration by the Court of Appeals in the King case has been repealed by the Traffic Act of March 3, 1925.

In the Traffic Act of March 3, 1925, the Director of Traffic is charged with its execution. No help is given by the Director as to the construction to be placed upon Section 8 as it appears in the Traffic Act, because he has not undertaken, as did the Commissioners in respect of the Act of March 13, 1917, to enter into any agreement with any State whereby any individual who has become a resident of such State after the revocation of his District operator's permit is permitted to operate a motor vehicle in the District during the period for which his District operator's permit is revoked, provided he has complied with the laws of said

State in respect of the registration of the motor vehicle and has obtained an operator's permit from said State. We must, therefore, look to all of the provisions of the Traffic Act of March 3, 1925, to ascertain the intent of Congress as expressed in said Section 8 of said Traffic Act.

Let us transpose the facts of the King case and suppose them to be as follows:

The Director of Traffic, after examination, believing that King, a resident of the District of Columbia, was mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property (Section 7 (*a*) of the Traffic Act) issued him an operator's permit for a period of three years from its issuance. Within six months after the issuance of this operator's permit King was convicted in the Police Court of a second or subsequent offense of reckless driving, a third or subsequent offense of speeding, or of fleeing from the scene of an accident, or of operating while under the influence of intoxicating liquor or drugs, in violation of Sections 9 (*c*), 9 (*d*), and 10 (*a*) of the Traffic Act, and was punished by a fine, or jail sentence, or both. The Clerk of the Police Court, as provided by said sections of the Traffic Act, certified such convictions forthwith to the Director of Traffic. The Director of Traffic thereupon, as commanded by Congress in said sections of the Traffic Act, revoked King's operator's permit. King, within a week after the revocation of his District operator's permit, moved to the State of Virginia and complied with the laws of that State

with respect of the registration of his motor vehicle. Within a month after he so registered his car in Virginia, King was arrested while operating a motor vehicle in the District of Columbia. At the time of his arrest his motor vehicle bore Virginia license tags and he had in his possession, and exhibited, a registration card which, under the laws of Virginia, entitled him to operate in that State. King was charged in the Police Court, *not with operating a motor vehicle in the District without first obtaining an operator's permit, in violation of a police regulation,* but, under Section 13 (*d*) of the Traffic Act of March 3, 1925, with operating a motor vehicle in the District *during the period for which his operator's permit was revoked.*

Congress in Section 13 (*b*) of the Traffic Act of March 3, 1925, expressly provided that the operator's permit issued to King by the Director of Traffic having been revoked, *no new permit should be issued to him for at least six months after the revocation, except in the discretion of the Director.* And in Section 7 (*a*) of the Traffic Act of March 3, 1925, Congress expressly provided that should the Director of Traffic believe that the reissuance of a permit to King might prove a menace to public safety, he might, in his discretion, refuse the reissuance of a permit to King.

Congress having thus expressly declared in said Section 13 (*b*) that no new permit should be issued to King for at least six months, except in the discretion of the Director; having further expressly declared in Section 7 (*a*) that if the Director believed the reissuance of a permit to King might prove a men-

ace to public safety, he might refuse the reissuance thereof; and having further expressly declared in Section 13 (*d*) that if King was found guilty of operating a motor vehicle in the District during the period for which his operator's permit was revoked he should be punished, for each such offense, by a fine of not less than $100 nor more than $500, or imprisoned not less than thirty days nor more than one year, or both—could it have been successfully argued that Congress intended by the language of Section 8 of the Traffic Act of March 3, 1925, to permit King to do the very thing which Congress itself had already expressly declared he should not do, namely, operate a motor vehicle in the District during the period for which his operator's permit was revoked, or to escape the very punishment which Congress itself had already provided he should suffer if he was found guilty of operating a motor vehicle in the District during the period for which his operator's permit was revoked? It is respectfully submitted that such an interpretation of said Section 8 of the Traffic Act would do violence to the expressed intention of Congress and would defeat the very object and policy of the Traffic Act of March 3, 1925.

In the case of Croson *v.* District of Columbia, 55 App. D. C., 122, 123, the Court of Appeals had under consideration the same section of the Act of March 3, 1917 (39 Stat. 1004, 1012), passed upon by it in the King case, *supra*. The court in its opinion said:

> "It is even more important, in our view, that the drivers of all vehicles within the District

should satisfy the requirements of the traffic regulations as to their qualifications to operate motor vehicles than that those vehicles should be registered and carry identification tags. The vehicles are dangerous only when driven, and, unless all drivers are to be subject to these reasonable regulations, there can be no real protection to the public. After all, as already intimated, it is a question of congressional intent, which is clear in this case."

Respectfully submitted,

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Attorneys for Petitioner.

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 229

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, PETITIONER,

vs.

CHARLES H. FRED, ALIAS HAMILTON C. FRED.

BRIEF ON BEHALF OF PETITIONER.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 229

THE DISTRICT OF COLUMBIA, PETITIONER,

vs.

CHARLES H. FRED, ALIAS HAMILTON C. FRED.

BRIEF ON BEHALF OF PETITIONER.

Statement of Case.

1. THE LAW.

The Congress of the United States, sitting as the legislature for and in its sovereign capacity over the District of Columbia, on March 3, 1925, enacted a law (43 Stat. 1119) for the regulation and control of motor-vehicle traffic in the District of Columbia known as

> "An Act to provide for the regulation of motor-vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes. * * *"

1*j*

This Act after providing comprehensive machinery for the carrying into effect of its designated purposes through the medium of a director of traffic, together with a complete revision of the law relating to operators' permits and their revocation and suspension, amended certain sections of the Code of Laws for the District of Columbia, to wit: Sections 42, 44, 45 and 204.

Congress later by its enactment on July 3, 1926 (44 Stat. 812), enlarged the jurisdiction of the Commissioners of the District of Columbia and their traffic director by providing for the further regulation and control of all vehicles, pedestrians, draft animals, beasts of burden and all appliances moved over the highways on wheels or traction tread, including street cars. This amendment likewise directed that all prosecutions for violations of provisions of both Acts, as well as regulations promulgated thereunder, be by information filed by the corporation counsel for the District of Columbia, except one provision relating to the possession and use of "smoke screens". The combined Acts are therefore among those classified as police or municipal regulations (United States *v.* Cella, 57 App. D. C., 433-435).

The amending Act repealed Section 7 of the original one dealing with operators' permits and the part of Section 13 relating to revocation and suspension of operators' permits, and specifically re-enacted them in broader and more comprehensive terms, giving to your petitioner additional powers on the subject-matter, as well as granting to individuals whose permits had been suspended or revoked the right of appeal to

the Commissioners of the District of Columbia, and to the Court of Appeals of the District of Columbia.

These two Acts of Congress are known as and will be cited in this brief as "The Traffic Act for the District of Columbia."

2. The Facts.

On November 8, 1926, petitioner, through its director of traffic issued to respondent Fred, a resident of the District of Columbia, a District of Columbia permit to operate a motor vehicle in the District (R. p. 7).

On the 15th day of December, 1926, the director of traffic, under authority of Section 13 of the District of Columbia Traffic Act, revoked said permit and right of respondent to operate a motor vehicle in the District of Columbia (R. p. 8).

On the 26th day of December of the same year respondent was personally served in the District of Columbia with a copy of said order of revocation (R. p. 7), from which order no appeal was taken, either to the Commissioners of the District of Columbia or to the Court of Appeals, as provided for in the Traffic Act.

Prior to the issuance of respondent's permit, he had been convicted of numerous traffic violations by the Police Court of the District of Columbia, and subsequent to its revocation by petitioner respondent was convicted of reckless driving and operating during the period for which his operator's permit had been revoked and suspended (R. p. 6), the latter offense being before his arrest in the instant case, which was, in fact, therefore, a second offense.

In April, 1928, respondent, while still a resident of the District, was issued District of Columbia automobile tags and registration card (R. p. 8).

Respondent then moved to the State of Virginia and on August 6, 1928, was issued a resident's motor-vehicle registration card and number plates for his automobile by the proper Virginia authorities, both in compliance with the registration laws of that State (R. p. 9). No permit, as required in the District, is issued by the State of Virginia to its operators.

Respondent on the 3d day of September, 1928, five months after he had left the District of Columbia and one month after registering his motor vehicle in the State of Virginia, was in a collision in the District of Columbia while operating his automobile. This, notwithstanding the fact that his permit and right to drive in the District had not been restored. He was thereupon arrested and charged with operating a motor vehicle in the District of Columbia during the period his right to do so had been revoked (Sec. 13 (*d*)). At the time respondent had been operating his vehicle in the District for about four hours, and had with him his Virginia registration card and his vehicle bore corresponding Virginia tags (R. p. 9).

3. The Procedure.

On September 4, 1928, petitioner filed in the Police Court of the District of Columbia an information charging that respondent

> "• • • on the 3rd day of September, in the year nineteen hundred and twenty-eight, in the

> District of Columbia aforesaid, and on K street Northwest, did then and there operate a certain motor vehicle and during the period for which his operator's permit to drive a motor vehicle in the District of Columbia had been revoked and suspended by the Director of Traffic * * * contrary to and in violation of an Act of Congress in such case made and provided, and constituting a law of the District of Columbia * * * (R. p. 2).

This charge was made under authority of Section 13 (*d*) of the Traffic Act for the District of Columbia, which reads as follows:

> "Any individual found guilty of operating a motor vehicle in the District of Columbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this Act shall, for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than 30 days nor more than one year, or both" (R. p. 7).

Trial was had in the Police Court of the District of Columbia before the Honorable John P. McMahon, one of the judges thereof, and a jury.

After the case was closed by both the District of Columbia and the defendant, an instruction based, among other things, on Section 8 of the Traffic Act was asked on behalf of the defendant. That section provides:

> "*Non-Residents.*
>
> SEC. 8. (*a*) The owner or operator of any motor vehicle who is not a legal resident of the

District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The director shall from time to time ascertain such privileges and cause his findings to be promulgated.

(*b*) Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit or (2) he has submitted to examination within 72 hours after entering the

District and obtained an operator's permit in accordance with the provisions of section 7 of this Act. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than $5 nor more than $50 or imprisoned not less than 30 days, or both."

The instruction asked being as follows:

"That upon all the testimony, as a matter of law, the jury should be instructed to return a verdict of not guilty, on the ground that the defendant, Charles H. Fred, alias Hamilton C. Fred, was the operator of a Virginia owned motor vehicle, who had complied with the laws of the State of Virginia in respect to the registration of motor vehicles and the licensing of operators and was exempt from compliance with the District of Columbia law relating to the issuance of operators' permits as set forth in Section 7 and Section 13 (*d*) of the Traffic Act of said District, by reason of the provisions of Section 8, paragraphs (*a*) and (*b*), relating to non-residents, and that in view of the prior decision by the Court of Appeals of the District of Columbia in the case of King *vs.* The District of Columbia, 51 Appeals D. C. 160, rendered January 22, 1922, defendant was within his rights in operating a motor vehicle in the District of Columbia with Virginia tags and registration card." (R. p. 9.)

The court refused the requested instruction, to which refusal the defendant, by his counsel, there and then duly noted an exception.

Aside from other grounds, this instruction was not tenable, there being no evidence that reciprocity existed between Virginia and the District of Columbia, or that the Director of Traffic of the District of Columbia had previously so found. (R. p. 9.)

The court instructed the jury as follows:

> "That if they believed under the evidence that the defendant did at one time have a District of Columbia operator's permit and that permit was revoked and had not been restored to him on the 3rd day of September, 1928, and he was operating a motor vehicle in the District of Columbia on that date, it would be their duty to bring in a verdict of guilty."

To this instruction defendant, by his counsel, duly noted an exception.

The jury after considering the case, returned a verdict of guilty; and sentence was thereupon passed upon the defendant by the court.

The defendant was granted a writ of error by the Court of Appeals of the District of Columbia, and on June 3, 1929, the judgment of the Police Court was reversed upon the authority of King *v.* The District of Columbia, 51 App. D. C. 160. On June 13, 1929, the Court of Appeals recalled its mandate in the instant case to afford the District of Columbia opportunity to apply to the Supreme Court of the United States for a writ of certiorari.

The case is now before this Honorable Court by virtue of a writ of certiorari to the Court of Appeals of the District of Columbia.

Assignment of Errors.

The Court of Appeals erred as follows:

1. In holding that the decision in the case of King *v.* District of Columbia, 51 App. D. C. 160, was controlling and decisive of the issues here involved.

2. In holding, in effect, that one section of a statute should be construed, without regard to the intention, object or policy of the legislative body, to annul other provisions clearly granted by another and subsequent section thereof.

3. In finding that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia under and by virtue of which a resident of the District of Columbia whose operator's permit was revoked could thereafter continue to operate a motor vehicle in the District of Columbia by becoming a resident of the State of Virginia, and licensing and registering his vehicle under the laws of that State.

4. In reversing the judgment of the Police Court which held respondent to be amenable to the provision of section 13 (*d*) of the Traffic Act.

ARGUMENT.

Differentiation of the King case (51 App. D. C. 160), followed by the Court of Appeals, from the case of present respondent.

King was convicted by the Police Court of the District of Columbia of operating an automobile in the

District of Columbia *without having a permit to do so*, in violation of the *police regulation* made and promulgated by the *Commissioners* under and by virtue of the police powers conferred upon them by Congress in the Acts of January 26, 1887, and February 26, 1892. From this finding King appealed. At that time there was no police regulation or statute which made it an offense to operate a motor vehicle in the District during the period for which the operator's permit was revoked or suspended.

In determining the King case the Court of Appeals had under consideration two things and two things only:

(1) The following provision from an Act approved March 3, 1917 (39 Stat. at L. 1004, 1012):

> "On and after December thirty-first, nineteen hundred and seventeen, all licenses, including identification tags and registrations, for motor vehicles heretofore granted shall expire and become null and void, and on and after January first, nineteen hundred and eighteen, there shall be charged annually for the licensing and registration of motor vehicles the following fees, which shall be paid annually to the collector of taxes of the District of Columbia and which shall include registration and the furnishing of an identification number tag—$5 for each vehicle of more than twenty-four horsepower and not exceeding thirty horsepower, $10 for each vehicle of more than thirty horsepower, $3 for each vehicle of twenty-four horsepower or less, and $2 for each motor cycle or similar mo-

tor vehicle: * * * *Provided further,* that *motor vehicles,* owned or operated by persons not legal residents of the District of Columbia but who have complied with the laws of the State of their legal residence requiring the registration of motor vehicles or licensing of operators thereof and the display of identification or registration numbers on such vehicles, and which identification numbers shall be displayed on such motor vehicles as provided by the laws and regulations of the District of Columbia while used or operated within the District, shall not be required to be licensed or registered or bear other identification numbers under the laws and regulations of the District if the State in which the owner or operator of such motor vehicle has his legal residence *extends the same privilege to the motor vehicles* owned or operated by legal residents of the District of Columbia; * * *."

(2) The following motor-vehicle reciprocity agreement between the District of Columbia and the State of Virginia:

"Anyone legally entitled to operated a motor vehicle in the State of Virginia shall be entitled to operate such vehicle in the District of Columbia, and without having District of Columbia license tags, and without having a District of Columbia driver's permit, so long as the Virginia authorities permit residents of the District of Columbia, legally entitled to operate vehicles there, to operate same within the State of Virginia, without Virginia license tags, and without a Virginia driver's permit. * * * That the

> State of Virginia, in which the defendant has his legal residence, extends the same privilege to the motor vehicles owned or operated by legal residents of the District of Columbia."

The court found that the District of Columbia had not, in said motor-vehicle reciprocity agreement, excluded residents of the State of Virginia whose District of Columbia operators' permits had been revoked. The case, therefore, was reversed and remanded on January 3, 1922.

More than three years after the King case was decided by the Court of Appeals, Congress passed an Act entitled "An Act to provide for the regulation of motor vehicle traffic in the District of Columbia, increase the number of judges of the police court, and for other purposes," approved March 3, 1925 (43 Stats. 1119), which Act was amended by the Act of July 3, 1926 (44 Stats. 812).

Section 8 (*a*) of said Act provides as follows:

> "The owner or operator of any vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the

> entrance of such owner or operator into the District equal to the period for which the director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The director shall from time to time ascertain such privileges and cause his findings to be promulgated."

Section 8 (*b*) provides as follows:

> "Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a State, Territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the State, Territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit, or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 7 of this Act."

Is the same interpretation to be given to said Section 8 (a) of the Traffic Act as was given by the Court of Appeals in the King case to the provision of the Act of Congress of March 13, 1917? In determining this question it must be borne in mind that in the King

case that court said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution, and that the court believed that the agreement between the District and the State expressed correctly the meaning of the statute, and that the *intention of Congress* was, therefore, that King should be permitted to operate a motor vehicle in the District notwithstanding the fact that his District of Columbia operator's permit had been revoked.

The defendant in the instant case was charged with operating a motor vehicle in the District during the period for which his operator's permit was revoked, in violation of said Section 13 (*d*) of the Traffic Act and not with operating without permit as in King case.

The Court of Appeals in its opinion in the Fred case refers to only two sections of the Traffic Act, namely, Sections 8 and 13 (*c*). There are more than thirteen sections in said Traffic Act, and it is respectfully submitted that they either were not sufficiently stressed before the Court of Appeals or the court departed from or disregarded the elementary principles with respect to the construction of statutes.

Had the Court of Appeals not merely attempted to determine the case at hand on the two sections to which it makes reference, it would have been constrained to have found that the intent of Congress was to prohibit the operation of vehicles by all persons, whether resident or non-resident, whose permit had not been restored after revocation or suspension. The intent of

the legislature in enacting the Traffic Act was to remove from the highways of this jurisdiction persons who by their character or actions in the manipulation of a motor vehicle (a recognized dangerous instrumentality) had been refused a permit or, having been granted one, had it suspended or revoked. It was unquestionably not the intent of the legislature to merely divest a person of documentary evidence of the fact that he had been authorized previously by the municipality to drive a motor vehicle, but to prevent him from having charge and operating one when by his former actions he had shown himself unfit to do so. In the face of the express declaration by Congress in Section 13 (*b*) of the Traffic Act that Fred's operating permit having been revoked by the Director of Traffic, no new permit should be issued to him for at least six months, except in the discretion of the Director; and notwithstanding the further express declaration by Congress in Section 7 (*a*) that if the Director believed that the reissuance of a permit to Fred might prove a menace to public safety, he might refuse the reissuance thereof; and notwithstanding the further express declaration by Congress in Section 13 (*d*) that if Fred was found guilty of operating a motor vehicle in the District during the period for which his operator's permit was revoked he should be punished, for each such offense, by a fine of not less than $100 nor more than $500, or imprisoned not less than thirty days nor more than one year, or both, the Court of Appeals has decided that Congress intended under the provisions of Section 8 of the Act to permit Fred to

do the very thing which Congress itself had already expressly declared he should not do, namely, operate a motor vehicle in the District of Columbia during the period for which his operator's permit was revoked, and to escape the punishment which Congress had already provided he should suffer if he was found guilty of *operating a motor vehicle in the District during the period for which his operator's permit was revoked.*

The transcript of record shows that Fred had been convicted previously as follows:

In the year 1922: for driving an automobile while intoxicated (twice);

In the year 1923: for driving an automobile while intoxicated; for speeding; for driving on wrong side of street; for driving with illegal brakes; for making illegal turn in street;

In the year 1925: for speeding; for reckless driving;

In the year 1927: for reckless driving;

In the year 1928: for operating motor vehicle during the period for which his operator's permit was revoked; and for operating while under the influence of intoxicating liquor. (R. p. 8.)

Is it not readily conceived that a person, who has been charged and convicted of offenses of the character this respondent has been, is a menace to life and limb of others, and equally so to their property when permitted to operate a motor vehicle?

Under the decision of the Court of Appeals it is useless for the Director of Traffic to attempt to take away

the right to drive a motor vehicle within the District of Columbia, for the reason that the operator can adopt the convenient expedient of crossing the border into an adjacent State, there register his motor vehicle, procure a State operator's permit, come back to this jurisdiction and operate unmolested. This is true whether the individual in question has been convicted of driving while under the influence of intoxicating liquor, leaving the scene of an accident without making his identity known, reckless driving, or any other serious offense. The effect is that citizens of the District of Columbia are without any protection for their own safety or the safety of their property against the actions of such individuals.

If Fred had continued to reside in the District after the revocation of his operator's permit by the Director of Traffic, instead of having moved to the State of Virginia, and had operated a motor vehicle in said District during the period for which his operator's permit was revoked, it could not be denied that he would have been amenable to the provisions of Section 13 (*d*) of the Traffic Act or that a conviction thereunder would have been proper.

Could it, with reason, be said that Congress intended that a person divested of authority to operate a vehicle within this jurisdiction, because he had shown himself unfit to drive, can, under the guise of comity, have that right restored by moving to an adjacent state? It cannot be contended that being possessed of documentary evidence of the right to operate such a vehicle in a sister state renders that person any the less a

menace to person and property in operating a motor vehicle on the highways of this jurisdiction. It is, therefore, absurd to even imagine that such a construction could have been thought of by the legislative body. This is especially so in view of the fact that the Act itself is fraught with provisions unmistakably showing that its whole aim was to rid the highways of persons who by their condition or manner of driving rendered travel unsafe for those lawfully upon them. To hold otherwise would, in effect, mean that the comity provision of the Act—to all intents and purposes meant only to be auxiliary to the law itself—overrides the entire intent and purpose of the legislation involved.

After the revocation of his operator's permit by the Director of Traffic Fred had a remedy specially provided by Congress in the Traffic Act. Under Section 13 (*a*) Fred was granted the right of appeal to the Commissioners of the District of Columbia for a review of the order of revocation made by the Director, and in the event the Commissioners sustained the order of the Director it was provided in said section that Fred might apply to the Court of Appeals for a writ of error to review the order of the Director or the decision of the Commissioners. It was also provided in said section that the decision of the Court of Appeals *should be final* and that an application to said court for a writ of error *should not operate as a stay of such order of the Director or the decision of the Commissioners.*

Suppose Fred had appealed to the Commissioners for a review of the order of revocation made by the Director and the Commissioners had sustained the order of the Director; that thereupon Fred had applied for and had been granted a writ of error by the Court of Appeals, and that upon a review that court decided that Fred's operator's permit had been properly revoked by the Director.

Following the decision of the Court of Appeals to its logical conclusion, if Fred, within a day or two after he had filed with the Commissioners an appeal from the order of the Director, had stepped across the line in the State of Virginia and there registered his motor vehicle and procured from that State a registration card, he would have had the right, under said Section 8, to operate a motor vehicle in the District not only during the time his appeal was pending before the Commissioners but also during the time his appeal was pending in the Court of Appeals and even after the Court of Appeals had finally decided that his operator's permit had been properly revoked by the Director. And this, notwithstanding the fact that Congress in said Section 13 (*a*) expressly provides that an application to the Court of Appeals for a writ of error *shall not operate as a stay of such order of the Director or the decision of the Commissioners*, and that *the decision of said court shall be final.*

It is intimated by the Court of Appeals in its decision that the remedy for the above situation is provided by Section 13 (*c*) of the Traffic Act, and that if Fred, while operating a motor vehicle in the District

as a resident of the State of Virginia, should violate any provision of the Traffic Act requiring revocation or suspension for any period of the operator's permit, upon his conviction thereof, the Director could suspend for such period as he saw fit the right of Fred to operate in the District under the registration card of the State of Virginia and notify the proper Virginia authorities of such suspension.

The application of the age-worn expression "An ounce of prevention is worth a pound of cure" was never more fitting than at this juncture. As in the prevention of crime so in the case of the protection of life is it incumbent upon the authorities, whether by legislation or the administration thereof, to see to the safety of its citizens rather than punish those who by their unlawful acts have brought about an injury.

Then too, it would be useless for the Director to suspend the right of Fred to operate in the District under the registration card issued to him by the State of Virginia, as it would only be necessary for Fred to step across the line into the State of Maryland and there register his motor vehicle and procure from that State an operator's permit. He would thereupon, under the decision of the Court of Appeals, be the owner or operator of a motor vehicle who is not a legal resident of the District who had complied with the laws of the State of Maryland in respect to the registration of his motor vehicle and the licensing of himself as the operator, and would have the right, under said Section 8 of the Traffic Act, to operate a motor vehicle in the District until such time as he again

committed such an offense as calls for the revocation or suspension of the operator's permit. When the Director of Traffic suspended his right to operate in the District as a resident of the State of Maryland he could move into another State and keep up this mode of procedure indefinitely.

When viewed in the light of all of the other provisions of the Traffic Act and its purpose, it is self evident that Congress did not intend by Section 8 (*a*) to permit persons whose right to operate in the District of Columbia had been suspended or revoked to continue to do so by merely taking up residence in another State. Such a construction would create the absurd results set forth immediately before and be contradictory of the very intent of the legislature. This is borne out by the fact that Congress by Section 13 (*c*) has specifically provided that the right of even a bona fide non-resident to operate a motor vehicle in this jurisdiction may be suspended upon his conviction of a violation of any provision of the Act requiring revocation or suspension. Thus, again, clearly indicating that the purpose of Congress was to protect the lives and property of citizens of his jurisdiction.

When the defendant operated his motor in the District during the period for which his operator's permit was suspended he was not a *bona fide* non-resident, *not having an operator's permit issued by the Director* but having in his immediate possession a registration card for his motor vehicle issued by the State of Virginia. He was in the nature of an impostor. After his permit was revoked by the Director he went

over into the State of Virginia and applied for and was issued a registration card by that State. Is it not a reasonable inference or presumption that when he applied to the State of Virginia for a registration card for his motor vehicle he withheld from the proper authorities of that State the fact of the revocation of his permit by the Director of Traffic of the District of Columbia, and the reasons therefor? And was not his failure so to do a continuing wrong in the nature of a cheat? His claim that he was a *bona fide* non-resident of the District and entitled, under said Section 8 of the Traffic Act, to operate a motor vehicle in the District during the period for which his operator's permit was revoked was at all times wrongful, a fraud upon Congress, and a peril to the citizens of the District of Columbia. Right to operate a motor vehicle in the District may not justly or reasonably be rested on a foundation so abhorrent to public policy (Minneapolis, St. P. & S. S. Ry. Co. *v.* Rock, United States Supreme Court Reporter, Volume 49, No. 15, 363, decided May 13, 1929).

In the case of Croson *v.* District of Columbia, 55 App. D. C., 122, 123, the Court of Appeals had under consideration the same section of the Act of March 3, 1917 (39 Stat. 1004, 1012), passed upon by it in the King case, *supra*. The court in its opinion said:

> "It is even more important, in our view, that the drivers of all vehicles within the District should satisfy the requirements of the traffic regulations as to their qualifications to operate motor vehicles than that those vehicles should

> be registered and carry identification tags. The vehicles are dangerous only when driven, and, unless *all drivers* are to be subject to these reasonable regulations, there can be no real protection to the public. After all, as already intimated, *it is a question of congressional intent, which is clear in this case.*"

To ascertain the intent of Congress relative to the right to operate motor vehicles in the District of Columbia, the issuance, revocation and suspension of operators' permits, and of the right to operate, it is necessary to consider all of the provisions of the Traffic Act.

After authorizing the Director by Section 6 (*b*) to make reasonable regulations with respect to the issuance and revocation of operators' permits, Congress in Section 7 (*a*) clearly expresses its intention that the Director shall limit the issuance or reissuance of operators' permits to such individuals as are found by him, after examination, to be mentally, morally, and physically qualified to operate motor vehicles in such manner as not to jeopardize the safety of individuals or property. Congress specifically provides in this section:

> "Should the Director believe that the issuance or reissuance of permit in accordance with the provisions of this Act may prove a menace to public safety, he may, in his discretion, refuse the issuance or reissuance thereof."

The section of the Act of March 13, 1917, under consideration by the Court of Appeals in the King case

has been repealed by the Traffic Act, and with its repeal passed, the agreement between the State of Virginia and the District of Columbia.

In the Traffic Act of March 3, 1925, the Director of Traffic is charged with its execution. No help is given by the Director as to the construction to be placed upon Section 8 as it appears therein, because he has not undertaken (as did the Commissioners in respect to the Act of March 13, 1917) to enter into any agreement with any State whereby any individual who has become a resident of such State after the revocation of his District operator's permit is permitted to operate a motor vehicle in the District during the period for which his District operator's permit is revoked, provided he has complied with the laws of said State in respect of the registration of the motor vehicle and has obtained an operator's permit from said State. We are limited, therefore, to the provisions of the Traffic Act in determining the intent of Congress with reference to the operation within this jurisdiction of a motor vehicle by a person whose right to do so had been suspended, and who subsequent thereto had taken up residence in a bordering State.

2. In construing a statute the provisions of the whole statute, its object and policy must prevail over a single provision thereof, and Section 13 (d) of the District Traffic Act controls and is paramount to the prior Section 8, relating to non-residents.

The elementary rule of statutory construction that all parts of an Act of Congress relating to the same

subject must be considered together has, up to the time of the decision in the instant case, been frequently applied by the lower court. (Miles Planting Co. *v.* Carlisle, 5 App. D. C. 138, 144; District of Columbia *v.* De Walt, 31 App. D. C. 326.)

In the case of District of Columbia *v.* Bailey, 57 App. D. C. 151, the court, in expounding the same Act under consideration here, stated that it should be interpreted in its entirety in order to give full force to all its provisions. (See also Goldman *v.* District of Columbia, 57 App. D. C., 106; Wheeler *v.* District of Columbia, 57 App. D. C. 106; Smallwood *v.* District of Columbia, 57 App. D. C. 58).

In Miles Planting Company *v.* Carlisle, 5 App. D. C. 138, 144, it was said:

> "It is an undoubted rule of construction that the special meaning or purpose that might under some circumstances be found to lurk in a single word or part of a sentence must yield to the plain intention disclosed by the whole."

In Peck *v.* Jenness, 7 How. 623, the Supreme Court of the United States said:

> "But it is among the elementary principles with regard to the construction of statutes, that every section, provision, and clause of a statute shall be expounded by a reference to every other; and, if possible, every clause and provision shall avail, and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another. The

> most general and absolute terms of one section may be qualified and limited by conditions and exceptions contained in another, so that all may stand together."

In Peck *v.* Boisdore's Heirs, 8 How. 122, the Supreme Court of the United States said:

> "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."

In Brown *v.* Ducheme, 19 How. 183, the Supreme Court of the United States said:

> "The general words used in the clause of the patent laws granting the exclusive right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal—because it is evident that in many cases it would defeat the object which the legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the legislature, as thus ascertained, according to its true intent and meaning."

In Pollard *v.* Bailey, 20 Wall. 525, 526, this Honorable Court said:

> "The intention of the legislature, when properly ascertained must govern in the construction of every statute. For such purpose the whole statute must be examined. Single sentences and single provisions are not to be selected and construed by themselves, but the whole must be taken together."

The comity contemplated by Section 8 (*a*) of the Traffic Act between the District of Columbia and other States does not render ineffective the direct mandate of Section 13 (*d*) of the Act, which specifically prohibits the operation of a motor vehicle by any individual in the District of Columbia during the period his or her permit has been suspended or revoked. In the instant case the transcript of record is silent as to any recognition on the part of the Director of Traffic of any comity whatsoever between this jurisdiction and the State of Virginia. Even if there had been recognition, a person whose permit had been suspended or revoked, and not restored, operating a vehicle within the jurisdiction during that time would none the less be amenable to the penalty fixed by Section 13 (*d*). To hold otherwise would give the Act a meaning plainly contrary to the one expressed therein. This is peculiarly so because of the well-recognized principle that it is the duty of courts to enforce all acts according to their terms. It is equally true that where there is a possible inconsistency between different provisions of an act the one last appearing is to be given

in the eyes of the law preference. This, for the reason that it is deemed to embody the last expression of the legislative will.

Sutherland on Statutory Construction, at pages 292-293, says:

> "* * * in the reading of a bill, matter near the close may be presumed to receive the last consideration."

In Section 221, page 294, of the same work it is stated:

> "The true principle undoubtedly is that the sound interpretation and meaning of the statute, in view of the enacting clause, saving clause and proviso, taken and considered together, is to prevail."

"Ex ante cedentibus et consequentibus fit optima interpretatio."

Rogers *v.* Rogers, 3 Wend. 503-526.

In both Section 8 and Section 13 (*d*) the verb "shall" is used by Congress. It is used, however, in no technical sense. Being used in Section 13 (*d*) in connection with the imposition of a penalty, it cannot be read as "may." The sole office of statutory construction is to give force to the naturally implied prohibition, which the imposition of a penalty presupposes. The Traffic Act was enacted to safeguard the health, safety and welfare of the public. The prohibition and penalty found in Section 13 (*d*) applies to all persons, as exemplified by the rulings of courts in convicting

all persons selling and transferring automobiles without first obtaining and properly executing bills of sale therefor. The purpose of these Acts being to prevent, as far as possible, the stealing of all automobiles. (Insurance Co. *v.* Todino, 145 N. E. 25; Howell *v.* Conn. Fire Ins. Co., 257 S. W. 178.)

The penalty found in Section 13 (*d*) of the Act applies to all persons. The right to the use of the highways of the District of Columbia exists in a non-resident automobile owner, but it is not an absolute right (State *v.* Johnson, 79 N. J. L. 49, 74 Atl. 538). The principle of comity and reciprocity is based upon mutuality, and we have shown, heretofore, no mutuality on the subject-matter involved here exists between the State of Virginia and the District of Columbia.

Respondent was not qualified to operate a motor vehicle in the District. Its operation by him brought merely the statutory consequence of having done a prohibited act. As was said in the following case relating to the operation of a motor vehicle by a non-resident, the act was sufficient to constitute a crime:

> Pawloski *v.* Hess (Mass.), 144 N. E. 760, 35 A. L. R. 945, 947-8, 949, 950:
>
> "This statute is plainly enacted in the exercise of the police power. It is designed to afford protection to the personal safety of travelers on the highways of our commonwealth. Its purpose is to promote the public safety and to conserve the public health. These ends are universally recognized as appropriate

objects for the exercise of the police power. * * * There is no constitutional mandate, so far as we are aware, which compels the government of this commonwealth to provide highways for general public use. It is an appropriate governmental function to undertake such public works. Having constructed them, reasonable and uniform regulations may be enforced concerning their use. *Legislation attempting to put non-residents on the same general footing as our own citizens with respect to the use of such public facilities does not violate any constitutional guaranty.* Hendrick *v.* Maryland, 235 U. S., 610, 59 L. ed. 385, 35 Sup. Ct. Rep. 140. * * * It is the duty as well as the right of the commonwealth to adopt all practicable and reasonable measures to insure the safety and health of all travelers on highways, whether in motor vehicles or in other ways. 'The movement of motor vehicles over the highways is attended by constant and serious dangers to the public.' Hendrick *v.* Maryland, 235 U. S. 610, 622, 59 L. ed. 385, 390, 35 Sup. Ct. Rep. 140, 142. It is also matter of common knowledge that many lives are lost and large numbers of persons injured through the operation of motor vehicles on highways. Any rational legislation calculated to diminish this appalling impairment of human usefulness and happiness is within the province of the legislative department of government. Com. *v.* Pentz, 247 Mass. 500, 143 N. E. 322. * * * There is no necessary duration to the sojourn here of a non-resident operating a motor vehicle on our highways such as commonly would accompany the transaction of business or the establishment of any mercantile or manu-

facturing enterprise. He might easily betake himself outside our boundaries in a few hours even from the most remote corner of the commonwealth, and from most places in a considerably shorter time.

These considerations cannot override fundamental rights or warrant attempts at unauthorized extensions of jurisdiction. They merely serve to emphasize the well recognized presumption in favor of the constitutionality of every statute and the requirement generally fixed by courts for their guidance, that statutes will be refused enforcement only when their conflict with the Constitution is beyond reasonable doubt. They indicate that the legislature in enacting the statute may have been attempting to remedy pressing evils of a practical nature. As was said in Hendrick *v.* Maryland, 235 U. S., 610, 624, * * * with respect to this special kind of statute: 'The action of the state must be treated as correct unless the contrary is made to appear.' * * * When the law clothes an intentional and intelligent act with specified consequences, then the doing of that act commonly entails those consequences. That principal is most frequently applied in the enactment of statutes penalizing as criminal the performance of a designated act, regardless of the motive which prompted it, or knowledge of the legislative prohibition on the part of the one performing the act. The simple doing of the act, not evil in itself, but merely prohibited by the legislature, brings about the statutory consequences of crime. (Citing numerous authorities.)

It is settled that police regulations of a reasonable nature respecting the use of its high-

> ways by non-resident operators of motor vehicles may be enacted by the several states. It is settled further that such regulations may go to the extent of utter prohibition unless and until licensed by the state. Kane *v.* New Jersey, 242 U. S. 160. * * *."

See also: *Union Securities Co. v. Adams* (33 Wyo. 45), 50 A. L. R. 23.

3. The lower Court erred in finding that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia under and by virtue of which a resident of the District of Columbia whose operator's permit was revoked, could thereafter continue to operate a motor vehicle in the District of Columbia by becoming a resident of the State of Virginia, and licensing and registering his vehicle under the laws of that State.

In its opinion the lower Court (Rec., p. 12) states:

> "The section (Section 8) charges the Director of Traffic with the duty of ascertaining whether a similar privilege is extended to legal residents of the District in such States, and to cause his findings to be promulgated. *This he has done.*" (Italics ours.)

At the time of the conviction of the respondent, there was no reciprocity agreement between the Director of Traffic and the State of Virginia purporting to confer upon respondent, as a resident of the State of Virginia, the right to operate a motor vehicle in the District of Columbia during the period for which his District operator's permit was revoked.

If the provisions of the Act of March 3, 1917 (39 Stats. 1004, 1012), applied both to the vehicle owned or operated by a non-resident as well as to the non-resident owner or operator himself, these provisions, together with the reciprocal agreement passed upon in the King case, have been repealed by the District Traffic Act.

Since the passage of the Traffic Act the Director of Traffic has not entered into any such reciprocal relations or agreement with the State of Virginia. The Transcript of Record herein contains no evidence of any such agreement. On the contrary, the Record, page 9, contains the following in connection with the overruling of the motion for a directed verdict:

> "Thereupon the court, Honorable John P. McMahon, presiding, overruled said motion, stating that no agreement had been shown to exist between the State of Virginia and the District of Columbia, whereby residents of that State and the District are permitted and entitled to operate motor vehicles after revocation of permits, nor did such right exist as a matter of reciprocity, and that Section 8 of the District Traffic Act could not and did not apply because Section 13 (*d*) specifically prohibits any individual from operating * * * during the period for which his operator's permit had been revoked or suspended * * *."

Under Section Six (*b*) of the District Traffic Act, the Director of Traffic is authorized to make reasonable regulations with respect to brakes, horns, * * *, the issuance and revocation of operators' permits, and

such other regulations with respect to the control of traffic in the District, *not in conflict with any law of the United States, as are deemed advisable* * * *."

Not only does the Record herein, page 9, show there was no agreement between the Director of Traffic and the State of Virginia authorizing the respondent, as a resident of Virginia, to operate a motor vehicle in the District of Columbia during the period for which his District operator's permit was revoked, but if the Director of Traffic had undertaken to enter into any such agreement with the State of Virginia, it would have been null and void because it would have been beyond the scope of the authority conferred upon the Director by Section 6 (*b*) of the District Traffic Act and would have been inconsistent with the express provision of Section 13 (*d*) of said Act.

4. The judgment of the Police Court should be sustained.

The control of the streets in the District of Columbia is in the Commissioners of the District. The legislation in question here is a matter of purely local concern, and it is submitted that petitioner is entitled and justified, under the terms of the District Traffic Act, in requiring those who use its streets and highways to obey its laws. Hendrick *v.* Maryland, 235 U. S. 610-622-624.

When in 1925 and 1926 Congress passed the Traffic Act for the District of Columbia, it was unquestionably mindful of the fact that the congested condition of the highways by the great influx of automobiles made the proper regulation of vital importance. Likewise

Congress had before it the fact that the Court of Appeals of the District of Columbia by its decision in the King case left no redress but Congress, in the matter of preventing traffic violators whose permits had been revoked because of the reckless or wanton manner in which they had operated vehicles from entering this jurisdiction under the guise of being residents of another State. Knowing this condition Congress purposely enacted the prohibition set forth in Section 13 (*d*) of its Act, and purposely granted full power to the public officer created thereby, subject, of course, to the control of petitioner, which alone could promulgate any valid regulations or proclamations.

We respectfully submit that the decision of the Court of Appeals of the District of Columbia should be reversed and the conviction had against respondent under the positive inhibition of Section 13 (*d*) of the Traffic Act be affirmed.

Respectfully sumbitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 229.

DISTRICT OF COLUMBIA,

vs.

CHARLES H. FRED.

BRIEF ON BEHALF OF THE RESPONDENT.

HAWKEN & HAVELL,
By S. McCOMAS HAWKEN,
Attorneys for Respondent.

January 13, 1930.

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SUPREME COURT OF THE UNITED STATES.

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No. 229.

DISTRICT OF COLUMBIA,

vs.

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BRIEF ON BEHALF OF THE RESPONDENT.

STATEMENT OF FACTS.

The respondent, a bona fide resident of the State of Virginia was on November 8th, 1926, while then a resident of the District of Columbia, issued a permit to operate an automobile in said District, which permit was revoked on the 15th day of December of the same year. One year and four months thereafter said respondent became a resident of the State of Virginia at a place known as Hamilton, being a point about 50 miles distant from the territorial limits of the District of Columbia. On August 6th, 1928, being a year and eight months after the revocation of his permit in

the District of Columbia, there was issued to him by the proper authorities of the State of Virginia a motor vehicle registration card entitling him to operate a motor vehicle in that state. In obtaining said registration card, the respondent complied with all the laws of the State of Virginia. In addition to the registration card, the Virginia authorities issued to the respondent automobile tags for his automobile. On the 3d day of September, 1928, after the respondent had been in the District of Columbia about four hours, he was arrested and charged with operating an automobile in said District after the revocation of his driver's permit; at the time of his arrest, the respondent exhibited the registration card issued to him by the State of Virginia and had on his automobile the proper Virginia automobile tags.

ARGUMENT.

There is but a single question involved in this case and that is, as a bona fide resident of the State of Virginia, had the respondent the right to operate an automobile in the District of Columbia, nothwithstanding the fact that his District permit had been revoked prior to his becoming a resident of Virginia. It will be noted that there was no question raised in the lower court that the respondent was not a bona fide resident of the State of Virginia, nor was it contended by the District that the purpose of the respondent in becoming a resident of the State of Virginia was in order to evade the traffic laws of the District of Columbia.

It is our contention that Section 8 (a) of the traffic act of 1925, as amended July 3d, 1926, gave the respondent as well as all other bona fide residents of the State of Virginia

the right to operate an automobile in the District of Columbia. In Section 8 (a) of the traffic act, it is provided that non-residents of the District of Columbia shall have and be allowed to exercise the same rights with respect to the operation of motor vehicles in the District of Columbia as are granted to residents of the District of Columbia to operate such motor vehicles in the state from which the non-resident came. Said Section 8 (a) provides as follows:

"NONRESIDENTS.

"Sec. 8 (a). The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, *be exempt from compliance with section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District.* Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The director shall from time to time ascertain such privileges and cause his findings to be promulgated."

In accordance with the directions to the Director of Traffic contained in the foregoing Section, the said Director on the 1st day of October, 1925, made the following proclamation:

DIRECTOR OF TRAFFIC.

Washington, D. C., October 1st, 1925.

Right of Non-residents to Operate Motor Vehicles in the District of Columbia.

The District of Columbia Traffic Act of 1925 has established certain principles on which a non-resident may operate a motor vehicle in the District of Columbia.

Section 8 of this Act provides that "persons not legal residents of the District of Columbia but who have complied with all of the laws of their home state with regard to the registration of motor vehicles and licensing of operators thereof shall be exempt from compliance with Section 7 of the Act, regarding operators' permits, for a period of time immediately following the entrance of such owner or operator into the District, equal to the period for which the Director has previously found that a similar privilege is extended to residents of the District by such state." In accordance with this provision the Director has ascertained that residents of the District are not permitted to drive automobiles in the following states when they may have in their immediate possession an operator's permit duly issued by the Director unless the automobile so driven bears District registration tags; and then only for the periods listed after the state named:

State	*Reciprocity Period*
Arizona	4 Months
Connecticut	15 Days
Delaware	Unlimited
Maine	"
Maryland	90 Days
Massachusetts	30 Days
New Jersey	15 Days
Oregon	3 Months
Rhode Island	30 Days
Vermont	Unlimited
Virginia	"
West Virginia	3 Months

It is, therefore, apparent that residents of these states are violating the law when driving in the District without a District operator's permit, unless the car driven by them bears the registration tags of their home state.

(In the case of Virginia no operator's permit is required.)

The following named states do not issue or require operator's permits and a legal resident of one of these states may operate any automobile in the District of Columbia for the period of time set after the name of each state, in accordance with the rule of reciprocity, when such legal resident of such state has in his possession proof that he has complied with the laws of his home state with regard to registration of motor vehicles or the procurement of certificate of title. In other words, such non-resident must, at all times, when operating a motor vehicle in the District of Columbia have in his possession (his immediate possession) either a registration certificate made out in the name of the operator or proof that a registration certificate or a certificate of title has been issued in his name.

State	*Reciprocity Period*
Alabama	Full Reciprocity
Arkansas	90 Days
Colorado	90 Days
Florida	Full Reciprocity
Georgia	30 Days
Idaho	90 Days
Illinois	6 Months
Indiana	60 Days
Iowa	Full Reciprocity
Kansas	60 Days
Kentucky	Full Reciprocity
Louisiana	90 Days
Minnesota	2 Months
Mississippi	30 Days
Missouri	90 Days
Montana	90 Days
Nebraska	Full Reciprocity
Nevada	90 Days
New Mexico	90 Days
North Carolina	60 Days
North Dakota	30 Days
Ohio	Full Reciprocity
Oklahoma	60 Days
South Carolina	30 Days
South Dakota	Full Reciprocity
Tennessee	30 Days
Texas	30 Days
Utah	6 Months
Wisconsin	Full Reciprocity
Wyoming	90 Days

The following named states issue and require operators' permits and a legal resident of any of these states may operate any motor vehicle in the District for the period of reciprocity when he has in his immediate possession a driver's permit issued in his name by such state:

State	*Reciprocity Period*
California	6 Months
New Hampshire	1 Week
New York	Full Reciprocity
Pennsylvania	" "
Washington	" "

Any person—resident or non-resident—may operate any car in the District when he has in his immediate possession a District operator's permit duly issued to him by the Director.

M. O. ELDRIDGE,
Director of Traffic.

It will be observed from a reading of the said proclamation that no operator's permit is required to be obtained or possessed by the operator of an automobile in the State of Virginia. Therefore, a resident of the State of Virginia authorized to operate an automobile therein may also operate the said machine in the District of Columbia without a permit and likewise a resident of the District authorized to operate an automobile in the District does not have to secure a permit to do so in Virginia. This proclamation setting forth reciprocal rights of automobilists in Virginia and the District of Columbia was in force on the said 3rd day of September, 1928, without change or alteration.

The trial judge ignored Section 8 (a) aforesaid and also the proclamation, on the theory that they were not applicable to this case.

In Section 13 (d), the language is general and says that anyone who operates an automobile after the revocation of his license shall be guilty of the offense, while Section

8 (a) is specific and applies exclusively to nonresidents and expressly says that residents of other States shall have the same right in the District of Columbia that residents of the District of Columbia have in their respective States. If it had been the intention of Congress to exclude those persons who had been residents of the District of Columbia and whose permits had been revoked but who had become residents of other States thereafter, Congress would have so declared. Congress did not, however, exclude such persons, and, therefore, under the well known rule of construction *expressio unius est excusio alterius*, they clearly come within the said section. *Murphy, by next friend* v. *Carlin, et al.*, 113 Mo., p. 112.

That the construction of respondent of Section 8 (a) is correct is shown by the interpretation placed thereon by the Director of Traffic himself. In the proclamation, *supra*, it is provided that residents of the State of Maryland and the District of Columbia have reciprocal rights for a period of 90 days, and until an agreement was entered into between the Director of Traffic and the authorities of Maryland, a person had the right to operate an automobile in the District of Columbia after having become a resident of the State of Maryland, notwithstanding the fact that prior to his residence in the State of Maryland his District permit had been revoked. The said agreement is as follows:

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF DIRECTOR OF TRAFFIC

Washington, D. C.

April 19, 1928.

RECIPROCITY WITH MARYLAND ON AUTOMOBILE DRIVERS' PERMITS

The order of the Director of Traffic, dated March 15, 1928, dealing with the rights of Maryland residents to operate motor vehicles

in the District of Columbia, is hereby rescinded and the following order issued in accordance with Section 8 of the Traffic Act.

An amendment to the Motor Vehicle Law of Maryland provides that effective on and after June 1st, 1927, non residents are permitted to operate automobiles in that state, except when the driving is done for compensation, provided the person owns a permit issued by his own state or the District of Columbia, based on an examination as to qualification to operate motor vehicles. Maryland requires a chauffeur's license (annual) for the operation of a vehicle for compensation or hire.

Residents of the District of Columbia who have secured motor vehicle drivers' permits in the regular manner will, under the new Maryland Law be permitted to operate automobiles in the state of Maryland, except when the driving is done for compensation or for hire.

In view of the above it is ordered that residents of the state of Maryland owning motor vehicle drivers' permits in that state may operate any automobile in the District of Columbia without providing himself with a District of Columbia permit, except when the driving is done for compensation or for hire, except also as to any person whose District of Columbia operator's permit has been revoked or suspended, while such order of revocation or suspension is in effect.

W. H. HARLAND,
Director of Traffic.

No such agreement has ever been entered into between the authorities of the District of Columbia and the State of Virginia and in the absence of such an agreement, it is fair to assume that the authorities of Virginia would not enter into such an agreement.

After the respondent became a resident of the State of Virginia, he lost his right to either get a new permit in the District of Columbia or have his old permit renewed because permits are granted by the Traffic Director only to residents of the District of Columbia. If the contention of the petitioner is correct then if a resident of the District of Columbia loses his right to operate a machine in the District because of the revocation of his permit and

then moves to another state, no matter how long he may live in that state he would be forever prevented from operating a car in the District of Columbia. This certainly could not have been the intention of Congress. From the brief of the petitioner, it would appear that the traffic act passed in 1925 was the first attempt to regulate traffic in the District of Columbia; such, however, is not the case. Prior to the traffic act, the Commissioners of the District of Columbia passed various ordinances dealing with the same subject matter as contained in said act, and the provisions of the act of 1925, with very few additions, embody the ordinances theretofore in effect in the District of Columbia. The traffic act merely transferred from the Commissioners to the Traffic Director the authority to enforce the various traffic rules and regulations. On page 8 of the petitioner's brief, it is stated that there was no evidence that reciprocity existed between Virginia and the District of Columbia or that the Director of Traffic of the District of Columbia had previously so found. In the instruction asked in the Police Court on behalf of the respondent Section 8 (a) was specifically called to the attention of the court and the proclamation of the Director of Traffic made pursuant thereto was part and parcel of Section 8. The Court refused the instruction because, as is shown on page 7 of the Record, the respondent had not shown that an agreement had been entered into between the District of Columbia and the State of Virginia under which one whose license had been revoked in the District and had then moved to Virginia had the right thereafter to operate a machine in the District of Columbia, notwithstanding the fact that he had procured from the State of Virginia the right to operate an automobile therein. It was, and is our contention, that the Act of Congress not having excluded such persons, that the respondent came

within its terms. The trial court ignored Section 8 (a) and also the proclamation under which one who had the right to drive an automobile in the State of Virginia also had the right to operate one in the District of Columbia. The present case is directly in line with the *King* case in 51 Appeals D. C. 160. In the *King* case, King had been a resident of the District of Columbia. The Commissioners of the District of Columbia under Paragraph E, Article 12 of the Municipal Regulations, revoked King's permit to operate a machine in the District of Columbia. King then became a resident of the State of Virginia, obtained the right to operate a machine in said State and then later drove the machine to the District of Columbia and was arrested for driving without a permit and was convicted, which conviction was reversed by the Court of Appeals, because, under the agreement existing between the State of Virginia and the District of Columbia, such a person was not excluded just as such a person is not excluded by Section 8 (a) of the traffic act. The only difference that we can see between the *King* case and the case under consideration is that there is a different penalty.

In the brief of the petitioner, it seems to us that there is an effort to obscure the fact that King's permit had been revoked by the District authorities prior to the time that he became a resident of the State of Virginia. The *King* case was decided in 1922, three years prior to the passage of the traffic act. It must be assumed that Congress was familiar with the *King* case, and if it had been the intention of Congress to interfere with states' rights and to exclude persons in the category of the respondent from its provisions, then in enacting Section 8 (a) of the traffic act which deals exclusively with non-residents, Congress would have so stated. This section does not so provide, therefore, it would seem to follow that such persons come under

its protection. It will appear from a reading of the agreement referred to in the *King* case and Section 8 (a) of the traffic act that they are substantially the same. The agreement is as follows:

> "Anyone legally entitled to operate a motor vehicle in the State of Virginia shall be entitled to operate such vehicle in the District of Columbia, and without having District of Columbia license tags, and without having a District of Columbia driver's permit, so long as the Virginia authorities permit residents of the District of Columbia, legally entitled to operate vehicles there, to operate same within the State of Virginia and without Virginia license tags, and without a Virginia driver's permit. . . . That the State of Virginia, in which the defendant has his legal residence extends the same privilege to the motor vehicles owned or operated by legal residents of the District of Columbia."

On page 12 of the petitioner's brief, it is stated:

> "The court found that the District of Columbia had not, in said motor-vehicle reciprocity agreement, excluded residents of the State of Virginia whose District of Columbia operators' permits had been revoked. The case, therefore, was reversed and remanded on January 3, 1922".

The foregoing statement fortifies our position in this case because the Act of Congress does not exclude such a person. It is also stated in the petitioner's brief, on page 14, that the Court of Appeals considered only two sections of the traffic act. There are only two sections involved in this case and those are Section 8 (a) and Section 13; being the only ones, it was not necessary to consider any other section.

The object of all traffic ordinances and acts is to protect the public, and the ordinances passed by the District Commissioners prior to the traffic act of 1925 had such object in view, and those ordinances were practically the same as the provisions of the traffic act. On page 19 of the petitioner's brief, it is stated:

> "Following the decision of the Court of Appeals to its logical conclusion, if Fred, within a day or two after he had filed with the Commissioners an appeal from the order of the Director, had stepped across the line in the State of Virginia and there registered his motor vehicle and procured from that State a registration card, he would have had the right, under Section 8, to operate a motor vehicle in the District. . . ."

We say, no. Because that would be a fraud upon the District and would show that he had merely gone there for the purpose of evading the District laws. The question, as we view it, is determined by whether or not such a person was a bona fide resident of the State of Virginia. Each case, of course, must be governed by the facts surrounding it. It was one year and eight months after the revocation of respondent's permit before he applied to the Virginia authorities for the right to operate an automobile. In view of this fact, how can it fairly be said, as stated in the brief of petitioner, that "he, (respondent,) was in the nature of an impostor". On page 24, in black type, it is stated:

> "In construing a statute the provisions of the whole statute, its object and policy must prevail over a single provision thereof, and Section 13 (d) of the District Traffic Act controls and is paramount to the prior Section 8, relating to non-residents."

The petitioner fails to point out any section that deals with the subject matter of this case in addition to Sections 8 (a) and 13. We contend, as heretofore stated in this brief, that Section 8 (a) deals exclusively and specifically with the rights of non-residents, while Section 13 merely contains general terms. On page 32 of the brief, in black type, it is stated:

> 3. "The lower court erred in finding that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia under and by virtue of which a resident of the District of Columbia whose operator's permit was revoked, could thereafter continue to operate a motor vehicle in the District of Columbia by becoming a resident of the State of Virginia, and licensing and registering his vehicle under the laws of that State."

The lower Court made no such finding as intimated in said paragraph 3. There was no contention in the trial court or the Court of Appeals that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia regarding the revocation of permits, but it was argued that by virtue of Section 8 (a) and the proclamation of the Director of Traffic that reciprocal rights existed and that respondent came within its provisions.

CONCLUSION.

We submit in conclusion that respondent had the right to rely upon the decision of the Court of Appeals in the *King* case and the provisions of Section 8 (a) of the traffic act and to assume he had the right after obtaining the registration card in Virginia to operate a machine from time to time in the District of Columbia. It would be un-

reasonable to believe that Congress intended to deny forever a person the right to operate an automobile in the District of Columbia who had become a resident of another state merely because at some previous time his permit had been revoked in the District of Columbia. As before stated after becoming a bona fide resident of the State of Virginia, the respondent did not have the right to secure a permit from the Director of Traffic in the District of Columbia. It surely was not the intention of Congress to put a man whose permit had been revoked under a disability and punish him for becoming a resident of another state. If this alleged offense had occurred a quarter of a century instead of 18 months after the revocation of respondent's permit, he would still be subject to punishment, if the contention of the petitioner is correct, under Section 13.

We respectfully submit that the decision of the Court of Appeals should be affirmed.

HAWKEN & HAVELL,

By S. MCCOMAS HAWKEN,

Attorneys for Respondent.

January 13, 1930.

SUPREME COURT OF THE UNITED STATES.

No. 229.—October Term, 1929.

District of Columbia, Petitioner, *vs.* Charles H. Fred, alias Hamilton C. Fred. } On Writ of Certiorari to the Court of Appeals of the District of Columbia.

[February 24, 1930.]

Mr. Justice Stone delivered the opinion of the Court.

Respondent was convicted in the police court of the District of Columbia of the offense of operating a motor vehicle in the District during the unexpired period of his operator's permit after it had been revoked. § 13 (d) of the Traffic Acts of the District of Columbia, Act of March 3, 1925, as amended by Act of July 3, 1926. The Court of Appeals of the District, on writ of error, set aside the conviction. 33 F. (2d) 375. This Court granted certiorari May 27, 1929, to review its judgment.

Section 13 (d) provides "Any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended, or for which his right to operate is suspended under this Act, shall, for each such offense, be fined not less than $100 nor more than $500, or imprisoned not less than thirty days nor more than one year, or both". The facts, proved at the trial, showed an unquestioned violation of this section by respondent unless, as contended, his possession of a Virginia operator's permit or license, aided by the reciprocity provisions of the District Traffic Acts, exempts him from its operation.

Following the revocation of his District of Columbia permit, respondent, who was then a resident of the District, took up his residence in Virginia and procured from that state a motor vehicle registration card and automobile license tags, authorizing him to operate his motor car in Virginia. The alleged violation of § 13 (d) occurred while his Virginia registration license was in

force and while respondent was temporarily in the District, driving his automobile equipped with the Virginia license tags.

By § 7, all persons operating motor cars within the District are required to have an operator's permit, which permit, under § 13(a), may be suspended or revoked by the Director of Traffic for cause. By § 7 (e) operation of a motor vehicle without a permit is punishable by fine of "not more than $500 or imprisonment for not more than six months, or both". But by § 8 (a) the requirement of an operator's permit is dispensed with in favor of non-residents who have procured a permit or license from a state granting like exemptions to residents of the District, as has the State of Virginia. The language of the exemption is: "shall be exempt from compliance with § 7 and with provisions of law or regulations requiring the registration of motor vehicles or the display of identification tags in the District".

The court below, in setting aside the conviction, rested its decision on the ground that this provision "expressly relieves the non-resident owner or operator of a motor vehicle, who has complied with the laws of his state respecting registration and operators' licenses from either registering his vehicle here or obtaining a local operator's permit, provided only that similar privileges are extended to residents of the District in that state". But respondent was not charged with violation of § 7, which forbids operating without a license, or of any provision or regulation requiring the registration of motor vehicles, which are the only offenses exempted under § 8. He was charged with a different offense, under § 13 (d), that of operating a vehicle within a specified time after the revocation of his permit, for which a different penalty is provided than for violations of § 7. It is significant that the exemption clause in § 8 (a) specifically refers to § 7 but makes no mention of § 13(d).

If the clause were ambiguous or there were any room for construing it, examination of the whole act makes evident its general purpose not to extend to non-residents any reciprocal privilege beyond relieving them from the necessity of procuring a District operator's license and complying with provisions for the registration of their vehicles, and that all other requirements of the Act and penalties for non-compliance were left in full force and effect. By § 13 (c) the right to operate a car in the District under the license or permit of a state may be suspended and operation of the car in

the District during the period of suspension is punishable under § 13 (d). It cannot be supposed that any distinction was intended to be drawn between the consequences of operating a car within the District by one whose right to operate under a foreign license had been suspended and one whose right to operate under a District license had been revoked or suspended. We can find nothing in the sections cited or the Traffic Acts as a whole to suggest that there is.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.